NONIMMIGRANT BUSINESS VISAS AND ADJUSTMENT OF STATUS

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BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

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ON

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NONIMMIGRANT BUSINESS VISAS AND ADJUSTMENT OF STATUS

FRIDAY, DECEMBER 11, 1981

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:45 p.m. in room 2228, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senator Grassley.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. We will now continue the hearings on the various aspects of the Immigration Act. We are focusing today on an increasingly important area of concern, and that is the nonimmigrant visas generally used by executives and technical personnel to obtain entrance into the United States.

These visas are more popularly known by the letters of their subsections in the INA. B-1, visitor for business; E-1 and E-2, treaty traders and treaty investors; H-1, persons of distinguished merit and ability; and the L visas, geared to the multinational corporations. Not to mention the ones I left out, which sound like alphabet soup, A through what, J? Yes, the rest.

We have heard of the importance of these visas in connection with American business and growth and our economy and those issues.

Conversely, we have heard of the abuse of these visas. The use of them where American skilled personnel is already available and for the purpose of entering the United States for other than temporary purposes, and this raises then the adjustment of status question:

Should one be able to adjust status within these nonimmigrant categories, or adjust to an immigrant category? This can be done under the present law. These adjustments take up a good portion of INS time and encourage the rather prevalent idea that once you get to the United States, there is a way to stay there, and we have found throughout 16 hearings that that is a rather prevalent note in America's immigration and refugee policies: Just get there.

So, finally, we want to review these categories themselves. Are they really separate categories, or are there very real overlaps that

make their separation of little worth? And might it be easier to have one visa covering all of these, or, perhaps, one for longer duration and one permitting multiple entries, or should we have tighter use and control of all of them?

Finally, should we have assurances in the statute, or administratively, that these nonimmigrant visas would not have an adverse effect on the economy of the United States?

Well, those are some interesting questions, and I think we can pursue some of them today in our hearing I think this will be the last hearing of the session. This will be the 16th hearing, some 75-plus hours, 195 witnesses. No trophies or awards have been given. [Laughter.]

And from that, I think we are on our way toward—and my colleague in the House, Congressman Mazzoli, conducting a similar array of hearings, and I fully perceive that we will be on our way toward markup soon after taking up in late January.

Well, we have the dynamic duo from the Department of State and the Department of Justice, Diego Ascencio, the Assistant Secretary for Consular Affairs, and Doris Meissner, Acting Commissioner of the Immigration and Naturalization Service.

And I note a new sparkle and enthusiasm as the continuing resolution has gone to the President's desk containing a pay raise for all Federal employees. [Laughter.]

There's just a new lilt to your walk.

So please proceed, if you will.

STATEMENT OF DIEGO ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY CORNELIUS D. SCULLY

Mr. ASENCIO. Mr. Chairman, I'm saddened in a way by one portion of your remarks. I was hoping that we could design a campaign ribbon for this series of hearings and discussions we have had for both sides. We thought that would only be just and appropriate.

Senator SIMPSON. We'll have a design contest for that. [Laughter.]

Mr. ASENCIO. Mr. Chairman, I would like to say that this particular hearing is one that has varying levels of complexity and depth, I think best exemplified by my prepared statement that I ask you to allow me to present for the record, and by my summary that I will give now. But in view of the possibility of these greater depths, I have come today loaded for bear. I brought with me my Deputy for Visas, Mr. Louis P. Goelz, and also the head of my Legislation and Regulations Office, Mr. Cornelius D. Scully, and Mr. Cecil Braithwaite. I would think that among us, if the questions get complex, we will either be able to answer or obfuscate the issue sufficiently so that nobody knows what we are talking about.

But our topic today is the temporary entry of aliens for business purposes and, as you have mentioned, the question of adjustment of status to permanent resident by aliens temporarily in the United States.

Temporary entry for business purposes is of increasing significance and complexity, apparently due to the increasing

internationalization of trade and business activity generally, and to the increasing importance of both foreign investment in the United States and American investment abroad.

These factors produce not only more temporary business travel, but also more complex situations which require careful consideration under our law.

Briefly, each of the nonimmigrant classifications concerned is as follows:

B-1, temporary visitor for business. A visitor for business is an alien having a residence in a foreign country which he has no intention of abandoning, who is coming to the United States for a business purpose other than to perform skilled or unskilled labor. This very broad general statement covers a multitude of possible activities, such as contract negotiations, consultation with business associates or subordinates, the placing or taking of orders for goods to be exported from or imported into the United States, inspection of work being performed under contract in the United States, and attendance at business meetings of various kinds, including seminars and conferences.

E-1, treaty traders, and E-1, treaty investors. Section 101(a)15(e) of the INA extends nonimmigrant classification to aliens who are nationals of a country with which the United States has an appropriate treaty of commerce, and who wish to enter the United States to engage in certain business activities.

H-1, workers of distinguished merit and ability.

H-2, other qualified temporary workers.

And H-3, trainees.

Section 101(a)15(h) of the INA applies to aliens who wish temporary entry into the United States to perform specified services or labor or for training.

H-1 classification is limited to aliens of distinguished merit and ability, including members of the arts and professions, as well as entertainers and athletes of exceptional stature in their fields of endeavor.

H-2 classification encompasses the performance of temporary services or labor not of an exceptional nature and an individual case determination that workers in this country capable of performing such services or labor are not available.

H-3 classification includes aliens invited to enter the United States by some firm, organization or individual to undertake training in commerce, agriculture or any other type of activity.

I, information media representatives. Under section 101(a)15(i) of the INA, nonimmigrant visas are issued on a reciprocal basis to bona fide representatives of foreign press, radio, television, film and other information media, but not to entertainers and their representatives, because the media content must be informational or educational in nature.

The applicant must establish to the satisfaction of the consular officer that he is a nonimmigrant and is a bona fide representative of a foreign information media organization, usually by a letter from the employer stating that the alien is a full-time employee going to the United States to perform his professional functions.

L-1, intracompany transfers. Section 101(a)15(l) of the INA permits the issuance of a nonimmigrant L-1 visa to an alien employee

of a firm, corporation or other business entity who is being transferred temporarily to the United States to continue rendering services to the same employer or to its affiliate or subsidiary.

The alien must have been continuously employed by the employing entity for at least 1 year, performing managerial or executive services or involving specialized knowledge.

Adjustment of status is a mechanism. It is not, in and of itself, a substantive provision of law. The INA provides a primary method of acquiring permanent resident status through the immigrant visa process, but it also allows an alien in the United States who meets certain conditions to acquire permanent residence through the adjustment of status process.

It is important to recognize, however, that whichever procedure an individual alien follows, immigrant visa issuance or adjustment of status, the substantive requirements are the same.

The Department considers this provision as a necessary element of our immigration system, the absence of which would likely create other problems.

In order to understand this point, one must look into history which is set forth in full in my written statement.

I am convinced on the basis of history that if there were no adjustment of status provisions, or if the qualifying requirements were excessively high, we would see a similar system develop once again.

I'd be pleased to respond to any questions, Mr. Chairman.

Senator SIMPSON. Thank you very much, Ambassador.

Ms. Meissner?

[Mr. Asencio's prepared statement follows:]

Prepared Statement of Hon. Diego C. Asencio

Mr. Chairman, members of the Subcommittee, it is a pleasure to appear before you once again. Our topics today are (1) the temporary entry of aliens for business purposes; and (2) the question of adjustment of status to permanent resident by aliens temporarily in the United States.

Temporary Entry for Business Purposes

The first of these topics -- temporary entry for business purposes -- is of increasing significance and complexity, apparently due to the increasing internationalization of trade and business activity generally and to the increasing importance of both foreign investment in the United States and American investment abroad. These factors produce not only more temporary business travel, but also more complex situations which require careful consideration under our law.

Among the authorized purposes for temporary entry which are set forth in section 101(a)(15) of the Immigration and Nationality Act (the nonimmigrant classifications are all defined in terms of purposes for temporary entry), five include virtually all temporary entry for business purposes: B-1 (visitors for business); E-1 (treaty traders); E-2 (treaty investors); H-1 (workers of distinguished merit and ability); H-2 (qualified workers whose services are needed in the United States temporarily); H-3 (trainees); "I" (media representatives); and L-1 (intra-company transferees). As all of these are nonimmigrant classifications, the visa application procedure is the same for all. The applicant must prepare and submit the standard nonimmigrant visa application form, together with whatever additional required documentation or other supporting evidence may be appropriate to establish his entitlement to the nonimmigrant classification he is seeking and his eligibility to receive a visa of that classification.

In certain cases -- H-1, H-2, H-3 and L-1 -- there is a condition precedent which must be fulfilled, i.e., the prospective em- ployer, or trainer in an H-3 case, must file a petition with the Immigration and Naturalization Service and the Service must ap- prove the petition and notify the appropriate consular officer of the approval. Unless the consular officer has been notified that the required petition has been approved by the Service, he cannot issue an H-1, H-2, H-3, or L-1 visa to an applicant who claims to be entitled to one of those classifications. In the other cases -- B-1, E-1, and E-2 -- no petition is required and the consular officer has the sole authority and responsibility for making the decision on all aspects of the application.

When the approval of a petition is required, there are three ways in which notification of the approval can be communicated from INS to the appropriate consular officer. The traditional (and time-consuming way) is to have the petition form itself, with the approval stamp, sent by mail to the consular office. Alternatively, if the employer (or trainer) will pay the costs involved, the notification can be communicated by telegram or telephone. Finally, about ten years ago INS and the Visa Office worked out a third procedure. Whenever a petition is approved, INS sends a notice to the petitioner informing him of the approval. In the early 1970's it was agreed that the petitioner could furnish a notification to the applicant who could, in turn, present it to the consular officer at the time of visa application. This is Immigration and Naturalization Service Form I-171C and instructions concerning this procedure are printed on the Form for the benefit of the petitioner and the applicant. This third method of approval notification is widely used, especially in cases in which the applicant has already entered the United States and will have to revalidate his visa during a temporary absence abroad.

A final procedural point of significance relates to the effect of an approved petition in H and L cases. The visa regulations provide that an approved petition is prima facie evidence of the facts recited in the petition. Practically speaking, this means that the consular officer is not authorized to readjudicate the petition, or to "second-guess" the Immigration and Naturalization Service. On the other hand, the consular officer may develop during the visa application procedure information which contradicts or casts doubt upon one or more facts recited in the petition. If that happens, the consular officer is required, by regulation, to suspend action on the visa application and return the approved petition to the INS office which approved it, together with a memorandum setting forth the information he has developed, so that the approving office can reconsider its prior approval. As an example, a consular officer might receive an approved H-2 petition for a skilled worker, and during the visa application procedure discover that the applicant did not actually possess the skills claimed in the approved petition. It would become his duty to suspend action on the visa application and return the petition, with a memorandum reporting the facts which had come to light. The approving office would then reconsider its prior approval and either revoke the petition or reaffirm its validity.

Turning now to the substantive side of these matters, I should like to describe briefly each of the nonimmigrant classifications concerned.

B-1 (Temporary Visitor for Business)

A visitor for business is an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States for a business purpose other than to

perform skilled or unskilled labor. This very broad general statement covers a multitude of possible activities. Among business activities within the purview of this classification are contract negotiations, consultation with business associates or subordinates, the placing or taking of orders for goods to be exported from, or imported into the United States, inspection of work being performed under contract in the United States, and attendance at business meetings of various kinds including seminars and conferences.

Outside the specific area of corporate business, there are other business activities which are permissible for a visitor for business. Those would include, for example, independent scholarly research carried on in this country by a foreign scholar. Moreover, certain types of foreign professional athletes may be classified as visitors for business if they plan to compete in the United States only for prize money and without any prearranged contractual employment.

Further, over the years it has been determined that, in limited circumstances, an alien who might at first glance appear to be properly classifiable as a temporary worker or trainee (the H classification which I will mention later) can instead be classified as a business visitor. These circumstances generally involve cases in which the alien will receive no compensation from a United States source. Two common examples are: (1) the foreign scholar who intends to spend a sabbatical year in the United States carrying on independent research and agrees to serve as a visiting lecturer at an American university while here without compensation from the American university; and (2) the employee of a foreign company who will receive training in the United States with a United States firm, who will continue to receive his salary from his foreign employer, and will receive no remuneration from the United States firm offering the training.

E-1 (Treaty Traders) and E-2 (Treaty Investors)

Section 101(a)(15)(E) of the INA extends nonimmigrant classification to aliens who are nationals of a country with which the United States has an appropriate treaty of commerce and who wish to enter the United States to engage in certain business activities. The same classification is accorded a principal alien's accompanying spouse and children. An applicant for an E-1 or E-2 visa does not have to establish that he has a specific residence abroad which he has no intention of abandoning, but only that he intends to depart from the United States upon termination of the qualifying activities.

In both cases, the applicant must either be the owner of the enterprise or, if an employee, be engaged in an executive or managerial capacity or have specialized qualifications essential to the operation of the enterprise. Employees of lesser rank or skills are not entitled to classification under this section of the INA. Where the employing entity is a corporation, it must be shown that the majority of stockholders are nationals of the treaty country and that they either reside abroad or are themselves maintaining status in this country as Treaty Traders or Investors.

To qualify as an E-1 Treaty Trader the applicant must establish that the business concerned involves some aspect of international trade, that this trade is substantial and that it is principally conducted between the United States and the country of which he is a national. There is no specific dollar valuation of substantial trade. A more important consideration than dollar value is the frequency and regularity of transactions. For E-2 Treaty Investor status, the applicant must show that he has made or is in the process of making a substantial investment in a business enterprise. There is no specific definition as to what con-

stitutes a substantial investment, and each case must be assessed on the basis of the individual business concerned. In either case, however, there must be adequate evidence that the individual business is of commercial significance, and is not simply a limited enterprise intended only to provide a livelihood for the applicant and his family.

H-1 (Workers of Distinguished Merit and Ability); H-2 (Other Qualified Temporary Workers); and H-3 (Trainees)

Classification under Section 101(a)(15)(H) of the INA is available to those aliens who desire to enter the United States temporarily for the purpose of performing specified services or labor, or to undertake training.

H-1 classification is limited to aliens of distinguished merit and ability. This includes members of the arts and professions as well as entertainers and athletes of exceptional stature in their fields of endeavor. Provided the applicant himself intends only a temporary stay, the fact that the particular position to which he is destined is in itself of an indefinite nature would not preclude the issuance of an H-1 visa. As I mentioned earlier, there are certain cases in which an alien who would be classifiable H-1 could also be classified as an B-1 visitor for business.

H-2 classification encompasses the performance of services or labor not of an exceptional nature, and is subject to two additional requirements not applicable to H-1 applicants. These are that the employer's need for the service or labor to be performed must of itself be temporary in nature, and that there must be an individual case determination that workers in this country capable of performing such service or labor are not available.

H-3 classification includes those aliens who have been invited to enter the United States by some firm, organization or individual to undertake training in commerce, agriculture or any other type of activity.

I (Information Media Representatives)

Under Section 101(a)(15)(I) of the INA, nonimmigrant visas are issued, on a reciprocal basis, to bona fide representatives of foreign press, radio, television, film, and other information media, and to their spouses and children. The Department has given the term "information media" a broad construction to include representatives of mass media and technical information entities. However, it does not apply to entertainment representatives or entertainers as the media content must be informational or educational in nature.

There is no petitioning process or special documentation necessary for an "I" visa application. The applicant must establish to the satisfaction of the consular officer that he is a nonimmigrant and is a bona fide representative of a foreign information media organization. This is usually accomplished through a letter from the information organization stating that the alien is a full-time employee going to the United States to perform his professional functions. An "I" visa permits a media representative and his family to remain in the United States so long as he maintains his status.

L-1 (Intracompany Transferee)

Section 101(a)(15)(L) of the INA permits the issuance of a nonimmigrant L-1 visa to an alien employee of a firm, corporation or other business entity who is being transferred temporarily to

the United States to continue rendering services to the same employer, or to an affiliate or subsidiary thereof. The alien must have been continuously employed by the employing entity for at least one year and the services to be rendered must be managerial or executive in nature or involve specialized knowledge.

While an applicant for an L-1 visa is not required to establish that he has a present residence abroad which he has no intention of abandoning, the consular officer must be satisfied that the applicant is entering the United States temporarily.

Spouses and children

In all cases, the spouse or child may accompany or follow later to join the principal applicant. If the principal applicant is a B-1 visitor for business, a spouse or child could qualify as a tourist (visa symbol B-2). For treaty traders, investors, and media representatives, a spouse or child is accorded the same classification as the principal applicant. H-4 classification is available for the spouse or child of an H-1, H-2, or H-3 nonimmigrant, and L-2 classification for the spouse or child of an L-1 nonimmigrant.

Adjustment of Status to Permanent Resident

Before offering any comments on the merit, or lack of merit, as the case might be, of the provision in our immigration law for adjustment of status to permanent resident of aliens temporarily in the United States, I feel I should make a few technical comments concerning this provision. First, adjustment of status is a mechanism; it is not, in and of itself, a substantive provision of law. The INA provides that the primary method of acquiring permanent resident status is through the immigrant visa process, but it

goes on to provide that an alien in the United States who meets certain conditions may be allowed to acquire permanent residence through the adjustment of status process rather than by obtaining an immigrant visa. It is important to recognize, however, that whichever procedure an individual alien follows -- immigrant visa issuance or adjustment of status -- the substantive requirements are the same. The same preference system applies, with the same requirements for acquiring preference status; the same numerical limitations apply; the same substantive grounds of ineligibility as set forth in section 212(a) of the INA apply. What is more, the processing of both kinds of applications is similar in nature. Thus, the benefit that flows to an alien who can adjust status is that he can acquire permanent residence without departing the United States, while the alien in the United States who applies for an immigrant visa at a consular office abroad must leave the United States, even if only for a few days, in order to obtain his visa.

The Department considers this provision as a necessary element of our immigration system, the absence of which would likely create other problems. In order to understand this point, one must look into history. Under the Immigration Act of 1924 there was no provision for adjustment of status. The only mechanism for acquisition of permanent residence under that Act was the issuance of an immigrant (then called immigration) visa by a consular officer abroad followed by admission for permanent residence at a port of entry after a journey from a foreign country. In the mid-1930s pressure arose to overcome this state of affairs. The Immigration and Naturalization Service thus established a procedure known as "pre-examination." Under this procedure, aliens in the United States temporarily who desired to acquire permanent residence and met certain conditions could apply to the Service

for an advance determination (pre-examination) of their admissibility for permanent residence if they should apply for admission at a port of entry with a valid immigration visa. Upon application, a file was opened, the dossier was examined and, if the alien appeared to qualify, the Service gave him a letter so stating. Then the alien proceeded to Canada, obtained an immigration visa at a United States consular office in that country and re-entered the United States as an immigrant.

In 1952 the Congress incorporated into the Immigration and Nationality Act section 245 providing for adjustment of status within the United States. In Senate Report 1137 of January 29, 1952, it was stated that "adoption of this procedure will remove the necessity for the administrative practice of pre-examination in effect at the present time ...". Interestingly enough, the requirements to qualify for adjustment of status under the original version of section 245 were so stringent that the old pre-examination system remained in effect until 1958 when section 245 was amended to ease the requirement.

In 1965 section 245 was again amended, this time to prohibit adjustment of status by all natives of the Western Hemisphere. This new restriction led shortly thereafter to the establishment of what is referred to as the "stateside criteria," a modified version of the old pre-examination system. Under this procedure, certain aliens who were ineligible for adjustment of status but who were permitted by INS to remain in the United States could have their immigrant visa applications processed at a consular office in Canada. This system was an improvement over the pre-examination system in that the alien did not present a dossier to INS for advance screening before undergoing the screening which the consular officer performs in the immigrant visa process. It was, nonetheless, the direct descendant of the old pre-examination procedure.

In 1976 section 245 was again amended, this time to remove the prohibition against adjustment by Western Hemisphere natives and to add a prohibition against adjustment by aliens (other than "immediate relatives") who worked illegally in the United States on or after January 1, 1977. The "stateside criteria" program continues in existence, although in a reduced form, since there are still aliens ineligible for adjustment of status under the current provision for whom some such benefit seems appropriate because they are given permission by the Service to remain in this country pending availability of an immigrant visa.

It is this history which leads me to the view that adjustment of status is a necessary element in our immigration system. I am convinced that, if there were no adjustment of status provision or if the qualifying requirements were excessively high, we would see the earlier pattern repeat itself once again.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

STATEMENT OF DORIS MEISSNER, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, ACCOMPANIED BY THOMAS SIMMONS

Ms. MEISSNER. Thank you.

Likewise, we will ask permission to enter our formal statement into the record.

Senator SIMPSON. Without objection.

[Ms. Meissner's prepared statement follows:]

PREPARED STATEMENT OF DORIS M. MEISSNER

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to describe the role of the Immigration and Naturalization Service in connection with the issuance of nonimmigrant visas to businessmen and the adjustment of nonimmigrant aliens to status as lawful permanent residents.

There are four primary nonimmigrant categories which permit the temporary admission of foreign business persons: the B-1 visa for temporary visitors for business, the E visa for treaty traders and investors, the L-1 visa for intra-company transferees, and the H visa for temporary workers and trainees.

The B-1 classification is the nonimmigrant visa most frequently used by foreign business persons. In order to obtain this visa, a business person applies directly to a United States embassy or consulate abroad. No prior review is conducted by the Immigration Service. The applicant must demonstrate his or her intention to maintain his permanent residence abroad; that the primary place of business is located outside the United States; that the visit to the United States will be temporary; and that his or her activity will not constitute gainful employment in the United States. Most usually these requirements are demonstrated by a letter of explanation from the business person's employer.

Under the B-1 category, a person may carry out a wide range of business activities which include solicitation of orders for goods manufactured abroad, attendance at conferences and short training sessions, purchase of U.S. goods and services, purchase of real estate or of business enterprises, participating as a member on a board of directors, and many other activities.

Although the Service does not participate in the visa issuance process, it frequently consults with the Visa Office concerning B-1 classification questions which arise at foreign consular posts and regulatory changes. The Service also inspects all B-1 visitors at U.S. ports of entry including both visaed and non-visaed foreign

or are investing a substantial amount of capital in a United States enterprise. Managerial, supervisory and other essential employees of treaty nationals or companies owned by treaty nationals can also qualify for E-1/E-2 visa issuance. At the present time nationals of 40 countries can qualify for E-1 trader visas and nationals of 30 countries can qualify for E-2 investor visas. A one-year admission period is authorized and extensions of stay are available in one-year increments. As with B-1 visas, the Immigration Service consults with the Visa Office concerning unique or complex questions which arise at consulates, inspects E visa holders upon their entry to the United States, and adjudicates applications for change of nonimmigrant status to that of treaty traders or investors.

The L-1 nonimmigrant visa classification for intra-company transferees was created by Public Law 91-225 (84 Stat. 116) April 7, 1970. This classification has been used increasingly by business persons transferred from foreign companies affiliated with American firms. In Fiscal Year 1971, 5,304 persons were admitted under this classification. In Fiscal Year 1978, 21,495 persons qualified and were admitted as intra-company transferees and were accompanied by 18,521 spouses and children. Their average length of assignments in the United States is approximately three years. Prior to L-1 visa issuance, the United States employer must file a visa petition with the Immigration Service district office having jurisdiction over the place of employment. The petition must be nationals to determine their admissibility. This is a significant review since one of the largest nationality groups using B-1 classification are Canadian citizens who are not required to obtain visas and whose only review comes at a port of entry by an immigration inspector. Also many thousands of European business persons hold indefinite validity B-1 visas and many Mexican business persons hold border crossing cards without expiration dates. Because employers are changed, including the reasons for

business visits, the port of entry inspection is all the more important to maintain the integrity of the B-1 classification. The Service also adjudicates requests for change of status by nonimmigrant aliens already in the United States. Many of these involve change of status to the B-1 classification or to other nonimmigrant categories sought by foreign business persons.

The E visa is another classification secured by foreign business persons by directly applying to an American consular post. The E-1 visa is issued to nationals of a country having appropriate treaty relations with the United States and who are conducting substantial trade between the United States and the treaty country. The E-2 visa is issued to other treaty country nationals who have accompanied with evidence that the alien beneficiary has been employed for one year abroad in a managerial or executive capacity or in a position involving specialized knowledge and that he or she is coming to the United States to work for the same employer or an affiliate or subsidiary thereof in a similar capacity. Upon approval, the petition is forwarded to the American Consular post where the visa is issued. If the alien is already in the United States, a change of nonimmigrant classification application will be processed by the Service. Persons may be admitted to the United States for up to three years and may receive subsequent extensions of stay in one-year increments.

One very difficult area in the adjudication process of a petition for L classification is in determining whether or not an affiliation exists between an overseas company and a United States firm. This is so because of often complex corporate structures, patterns of indirect ownership, and the effect of foreign law which may restrict or prohibit the ownership or control of enterprises by American firms. In order to reduce the time-consuming burden upon both employers in the United States who must furnish considerable documentary evidence to establish affiliation and the Services' examination of this documentation, we are considering the

compilation and publication of a list of American companies and their foreign affiliates, subsidiaries, or parent companies. Thus companies large enough to frequently use the L-1 visa category would only have to document their affiliate relationship once; subsequent petitions would not be required to have accompanying evidence of affiliation. Likewise, Service adjudicators would be freed from the laborious task of examining sometimes complex evidence of this affiliation.

The final category of nonimmigrant visas which are used by foreign business personnel are the temporary worker visas under section 101(a)(15)(H) of the Immigration and Nationality Act. The Service on November 30, 1981, provided testimony to this subcommittee on the H-2 visa classification. This category most usually is used by domestic American employers, but is occasionally used to bring foreign technicians, sales personnel, or others into the United States to work for affiliated companies. Because there exists a potential for adversely affecting American workers, the statute limits H-2 workers to temporary jobs and requires a finding that qualified U.S. workers are not available. This function has been delegated to the Secretary of Labor.

The H-1 nonimmigrant classification has become more frequently used in recent years by American companies affiliated or associated with foreign businesses in order to employ professionals and others who have demonstrated high achievement. The H-1 visa would be used in lieu of an L-1 visa classification where sufficient affiliation did not exist between the U.S. and foreign business or when the employee did not have the statutory requisite of one year of employment abroad by the foreign affiliate. Representative occupations include engineering specialities; marketing; patent and copyright law; satellite communications, and computer sciences. Finally, the H-3 visa classification may be used to bring to the United States management interns, export specialists, and other business persons to participate in training programs to familiarize

them with potential markets in the United States or to gain skills and knowledge needed by overseas businesses.

In order to secure an H visa classification an employer must file a visa petition with the Immigration Service in the United States with all required documentation. Upon approval, the petition forms a basis for the processing of a visa application at an American consular post abroad or for the adjudication of a change of nonimmigrant status application for the foreign national in the United States.

All of the foregoing nonimmigrant visa categories have served the legitimate needs of foreign business persons entering the United States and have functioned to encourage international commerce between the United States and its foreign trading partners. Overall, there has been only infrequent cases involving misuse of the nonimmigrant visa classifications by foreign business persons. The Administration at this time does not propose any specific changes in law relative to nonimmigrant visa classification for business persons or in the respective responsibilities assigned to the Attorney General and Secretary of State in visa authorization and issuance. The Immigration Service and the Department of State's Visa Office have had a long history of close cooperation in visa matters. Our activities, rather than being duplicative, are complementary and serve not only to further international commerce but to protect the American worker from job displacement.

ADJUSTMENT OF STATUS PROGRAM

The basic procedure for adjustment of status has remained basically unchanged since 1952 with the enactment of the Immigration and Nationality Act. However, the number of persons eligible for adjustment of status under section 245 of the Act and other statutory provisions have changed on several occasions as a result of amendatory legislation. The most significant of these

changes was the Act of October 20, 1976 (90 Stat. 2703) which became effective on January 1, 1977 and which made natives of the Western Hemisphere eligible to apply for adjustment of status. That legislation, along with the Indochina Adjustment Act (Public Law 95-412, 91 Stat. 1223), Section 5 of Public Law 95-412, and the Refugee Act of 1980 (Public Law 96-212), have dramatically increased the number of applications for adjustment or conversion of status processed by the Service. In FY 1965, 26,001 persons adjusted status., That figure was 55,761 in FY 1970 and it rose to 81,981 in FY 1976. In FY 1981, the number of persons granted adjustment or conversion of status totalled 174,724. This dramatic increase resulted from large numbers of refugees who completed their one-year's required physical presence in the United States. Receipts of adjustment of status applications are anticipated to remain high for the next several years.

The basic steps involved in processing an application for section 245 adjustment have always included a review of the application for completeness, proper execution, and determination of prima facie eligibility, including availability of an immigrant visa. Service officers follow the same basic steps taken by a consular officer in processing an application for an immigrant visa at a consular post outside the United States. These steps include: (a) requesting the applicant to submit any additional required document; (b) making security and criminal checks with the appropriate U.S. government agencies (plus, in adjustment cases, a check with the U.S. Consular Officer which issued a nonimmigrant visa to the applicant and/or which had jurisdiction over his places of residence abroad); (c) requesting the Department of State to allocate an immigrant visa number if the applicant is chargeable to the annual numerical limitations on immigrant visa issuance; (d) arranging for medical examination of the applicant; and (e) arranging for his interview by an Immigration and Naturalization Service (INS) officer. Procedures are simplified for conversion of

status for refugees who completed comprehensive background checks and a medical examination at the time of their entry to the United States. Interviews are also greatly simplified for refugees because they are not subject to as many exclusion provisions.

Through the years the INS has attempted to improve the efficiency of processing adjustment applications by revising the application form; improving the procedure for making checks with other agencies, including having the applicant (rather than INS clerks) fill out the forms; using that form for criminal, security and consular checks; streamlining the receipt of derogatory reports; devising a uniform system of processing so that all the basic processing steps are initiated simultaneously instead of the piecemeal and varying approaches formerly developed and used by the various INS field offices. The Service continues to develop new procedures for the adjustment program and also to enhance support activities such as records retrieval and automated processing of some phases of the application process. For instance, in the Washington, D.C., field office, approval notices, requests for visa numbers to the Visa Office, the issuance of filing receipts, and call-up of cases awaiting background clearances are computer generated. The Service plans for the expansion of this technology in time to all district offices.

In the arena of public policy debate there has been a continued tension over the years between the perception that an adjustment of status program may encourage nonimmigrant visa abuse and the reality that some mechanism is needed to facilitate the immigration process. This reality includes an economic and social structure dependent upon the interchange of people and interdependence between countries. I believe that an adjustment program is supported by the American business community and the general public and that severe restriction or curtailment of the ability of eligible persons to adjust status is not acceptable today. At the same time the adjustment process with its background review of all applicants and the statutory provision disqualifying from adjustment of status those who work without authority provide ample safeguards against nonimmigrant visa abuse and the admission to permanent residence of criminals and other undesirable persons.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you may have.

Ms. MEISSNER. I would like to introduce to you Tom Simmons who is with me today, who is from our Examinations Division, in case any technical questions come up.

As you said at the outset, we are talking about four visa categories today. The B–1 and the E visa are categories in which the Immigration Service does not have any formal review process prior to the issuance of the visa. However, in the B visa category we do have considerable responsibilities at the border with regard to inspection of people who enter the country with B visas, since a large number of those people are Canadian citizens who are not required to obtain visas, and thousands of European business persons who hold indefinite B–1 visas, as well as Mexicans with border crossing cards.

However, the review function that we do perform in large part on the business person's visa is with the L and the H visa—the intracompany transferee visa, as well as the temporary worker categories of visas.

The L visa has caused us some difficulties over the years because it is sometimes not so easy to determine the affiliation between an overseas company and a U.S. firm.

We are working right now on a method of reducing the time-consuming burden both upon employers in the United States who must furnish us information, as well as the problem that we have in our own offices in verifying the connection between the companies. We are looking at the possibility of compiling a list of companies and their subsidiaries as a one-time index of bona fide firms as a way of streamlining and smoothing out the work that is involved in our L visa petition review.

The subject of adjustment of status in the context of this hearing, I think probably refers to adjustment of status to the immigrant visa category. The significant policy issue there is the one that Diego touched upon, which has to do with whether or not the business person's visa isn't functioning in some way as a loophole for people to come into the United States on a temporary status and find a way to adjust to the immigrant category, thereby going around the consular system abroad, which has been established within the law as the appropriate way to enter the United States.

There probably is some misuse of the business person's as well as other visas in the United States, and probably some means by which that does serve as a subterfuge, but the alternatives are not attractive ones. In other words, it's somewhat a situation of the medicine probably being worse than the disease. We have had considerable experience over time with disallowing adjustment of status in the United States, and as a practical matter, it simply doesn't work because of all the exceptions and particular individual circumstances that come up to which we are sympathetic.

As a result, the administration has not taken a position to change that provision of the law, and we simply look to as tight administrative procedures as possible as the way to adequately control that.

I, too, am available for questions if you have them.

Senator SIMPSON. Thank you very much.

Let me just direct these to both of you, and you might both comment.

Could you comment on the desirability of continuing the separate categories of business visas, given an overlap that I, at least, perceive to exist? Would it be better to have fewer categories for business visas?

Mr. ASENCIO. Mr. Chairman, I consider that there is some overlapping, but nevertheless there are certain distinctions also between the categories, different tests that are applied, and if there were, for instance, a reduced number of categories, I think they would perhaps have to be impossibly broad. And so I think certainly the system now works, is clear, is easy of administration, and I don't see any particular advantage gained in merging the various concepts that are at play here.

Ms. MEISSNER. I would add to that, it always seems attractive to try to pull some of these things together, but from the point of view of enforcement and making the kinds of judgments that are useful, fair and judicious, it's almost more attractive to go in the other direction, to perhaps create some more distinctions.

I would say that our experience has been that the category that gives us considerable problems is the broadest category, the B-1 category, and I think probably the State Department would agree with us because it's just a very, very open, undefined category. It's difficult to maintain equities across the numbers of people who come in under that visa category. From the point of view of drafting the law, while it would be nice to consolidate them, in terms of actual implementation, I'm not so sure that that is helpful.

Senator SIMPSON. In the H-2 employee situation, which we had a separate hearing on, there, of course, is a Labor Department clearance to assure that no adverse effect is had on the U.S. economy, and we have heard—it's been presented to us, and we will hear, I think, in this hearing today that H-1's are frequently used when we believe that U.S. skilled personnel are available. Should the Labor Department make such a finding here on H-1, as well?

Mr. ASENCIO. There could be presumably, particularly on the professions, some validity to that. I would hesitate, though, to give the Labor Department authority to determine whether Mr. Pavarotti was an appropriate entrant into the United States. I'm not sure that would be within their ken.

Also whether someone like Pele should play ball.

Perhaps with regard to the professions themselves, there might be some validity to such an approach.

Senator SIMPSON. Do you have any comment on that?

Ms. MEISSNER. I think we would agree with that. It's clear that the H-1 category has wandered somewhat afield in practice from perhaps what the congressional intent was, and it may well be that we should be looking at Labor certification for some aspects of it.

I would agree with Ambassador Asencio that one doesn't want to be unreasonable about the perfectly obvious kinds of cases, but it's an area that we would be open to discussion about.

Senator SIMPSON. I think so. I think it would be worth pursuing, perhaps. And just for the record, when you describe, either one of you or any of us in our discussion of B-1 or B-2, there is no such designation in the statute sections like that. You are referring to B-1, business purpose, and B-2, pleasure purpose, and I think that's confusing sometimes because when you refer to the statute

and you're talking about G–4, why, you find the G–4; and if you're talking about H–1 or 2—but you don't find a B–1 or a B–2, and you have taken that to the full art form of putting a number to a situation where there is no number. And I think that's helpful sometimes, and I just wanted to have that in there.

What examination do we do here or is done in the field to assure limitation of adverse impact on the United States?

Mr. ASENCIO. With an H?

Senator SIMPSON. H–1.

Mr. ASENCIO. May I have Mr. Scully respond to that, Senator?

Senator SIMPSON. Please.

Mr. SCULLY. The Department of State does not undertake any adverse impact determination, Senator. Once an H–1 petition has been approved and a notice of approval has been sent to the consular officer, the issue basically is whether or not the alien is admissible statutorily under all of the generally applicable grounds that apply to the admission of nonimmigrants. But the Department of State does not undertake any examination of the adverse effect aspects of it.

Possibly Ms. Meissner could comment on the other side of it.

Senator SIMPSON. Has that ever been discussed as a possible approach?

Mr. SCULLY. No, sir, not in the context of Department of State operations, no.

Ms. MEISSNER. Well, it's inherent in the definition of H–1 that it is not an area that is subject to the adverse impact examination. That is, of course, the attractive aspect of it from the point of view of the person seeking the H–1 or the H–3. It's employer-initiated, and the categories that fall under H–1 are assumed to be categories where either the impact is not adverse or it is not sufficiently destructive of U.S. interests to require individual examination.

It is an area of some controversy, however, because there have been, as I said earlier, certain categories subsumed under H–1 about which there may be some question.

Senator SIMPSON. Yes. I think we will hear some of that today later.

At the present time two of the petitions, the B's and E's, are obtained by going directly to the consul, and H's and L's must petition to the INS.

Could you explain to us the difference in this procedure, and is this one that should be continued?

Mr. SCULLY. Yes, Mr. Chairman, in the case of the B–1 visitor for business or the E–1 or E–2, treaty trader and investor, there is no petition requirement, as you point out, and the applicant simply presents his application for a visa to the consular officer with whatever supporting documentation is appropriate to corroborate his claim to be entitled to that status.

In the case of the H and L, that documentation is submitted initially to the Immigration and Naturalization Service.

Now I don't know that the Department probably could really comment on the question of whether the petition requirement should be eliminated for H's and L's, but I think the Department would be concerned about imposing a petition requirement on applicants for E–1, E–2, and B–1 visas.

We have instructions and procedures on this. I think our officers abroad do a reasonably effective job in screening these applications, and I'm not sure what useful purpose would be served by having a petition requirement for the E classification or the B–1.

Certainly it would delay the processing of those applications, so from our perspective I think we would have problems with the notion of equalizing this by adding a petition requirement to the two classes that don't have it.

Perhaps Ms. Meissner would comment on the question of equalizing it in the other direction by removing it altogether.

Ms. MEISSNER. I think it's a system that's really developed for very pragmatic purposes. The employer is the motivating element in each of these visa categories, and if the employer is essentially stateside based, the application is made through the Immigration Service.

By the same token, if the employer is essentially overseas based, he goes to a consular office. And realining that relationship would probably simply add layers to the system that are not necessary.

Senator SIMPSON. Would you just briefly explain the adjustment of status procedures for the record? Do you think it is of value? Should it be restricted to prevent nonimmigrants to adjust to immigrants? Please, your thoughts.

Mr. ASENCIO. I would consider, Mr. Chairman, that if there were not an adjustment of status situation, we'd probably have to invent one. I can see the point, that this is subject to abuse, but also it seems to me a necessary expedient in the administration of the act, and one by the very history and nature of the development of the act which is necessary, and I think the strictures, if there are any, should come in the administration of adjustment of status, to make certain that the requirements are such that they are not subject to abuse.

Mr. SCULLY. If I might comment, Mr. Chairman, also, I think it's extremely important to recognize that whether an individual is seeking permanent residence through the immigrant visa procedure abroad, or through the adjustment of status procedure in the United States, he must meet the same substantive requirements. He must qualify for a preference status; he must meet the statutory eligiblity requirements; he must await his chronological turn, if he's subject to the numerical limitations; there must be a visa number available for him in the same chronological consideration that is given to visa applicants abroad; and in fact, adjustment of status applications by aliens subject to the numerical limitations are processed in the numerical limitation scheme in the exact chronological order.

So that although the alien does gain a benefit in the sense of being allowed to acquire permanent residence without departing the United States, he does not gain any substantive benefit in being allowed to acquire permanent residence without being subject to the same substantive rules for qualification that apply to an immigrant visa applicant abroad.

So I think it is very important to keep that in mind when considering the question of whether adjustment of status is a good thing, a bad thing, or a necessary thing, whichever.

Senator GRASSLEY. Are you saying that they ought to be allowed to adjust their status while they are in the country, or we ought to make them go home to their country and reapply and adjust their status that way?

Mr. SCULLY. I think what we are saying, Senator, is that the existence of the adjustment of status possibility within our law, within our immigration system, is a necessary component of it, and I think that history shows that at those periods when there has not been such a procedure, or such a possibility, or when the possibility has been very restrictively applied, that there have been pressures which have developed to provide administrative remedies, if you will, for the absence of such a provision.

There was no such provision, for example, prior to 1952. There was simply no authority in the law for anyone to adjust status prior to 1952, and in the middle 1930's a procedure arose which was known as preexamination. An alien in the United States who desired to become a permanent resident and who could meet certain tests applied to the Immigration Service for a preliminary or preexamination of his eligibility as an immigrant. If the Immigration Service found that he would be admissible at a port of entry, if he presented himself at a port of entry with an immigrant visa, he was given a letter so stating.

He then proceeded to a U.S. Consular Office in Canada, applied for the immigrant visa, received the immigrant visa, and then returned to the United States, presenting himself as an immigrant.

This was a cumbersome procedure. I have had occasion to look at the old regulations the Immigration Service had on the subject in the 1944 edition. The regulations occupied six or eight pages of regulatory material prescribing the procedures and the test and the administrative handling of the cases, and the adjustment of status provision we now have was enacted by the Congress in 1952 for the express purpose of providing a less cumbersome mechanism for aliens in the United States who met certain requirements to acquire permanent residence.

The Congress at that time was dissatisfied with the fact that there was no direct provision for this; that the administrative alternative which had been created to remedy this was cumbersome and time consuming, and the Congress simply declared that there was going to be a specific procedure under which this could be done in the United States.

Now we have had varying versions of this provision since then, with varying requirements and restrictions on it. We have had variations of this old preexamination procedure at varying times when the restrictions have been perceived as being excessive.

I think this leads us to the conclusion that regardless of one's views of the merits of it, it is an integral, necessary element or component of our system, because if it is not there, there will be pressure to develop some administrative alternative which will achieve virtually the same result, but at a greater cost to the Government.

I think that is essentially our feeling on it.

Senator SIMPSON. You talk about that action in 1952, and yet in 1965 they came back and prohibited adjustment of status to Western Hemisphere natives. Why was that?

Mr. SCULLY. My impression is, Senator, that that was because of a feeling that perhaps too many Western Hemisphere natives were availing themselves of it. Unfortunately, I was not involved in it at that time, so I can't speak to it knowledgeably.

I don't know if Ms. Meissner has any information on that point, but I frankly do not.

I think, however, it was observable that between 1965 and 1976, when that prohibition was again removed——

Senator SIMPSON. It was again, that's right.

Mr. SCULLY [continuing]. There developed the stateside criteria program. Now that was a variant of the old preexamination system which had existed in the 1930's and 1940's, and it is that sort of development that leads me, at least personally, to the conclusion that the more restrictive you are in this sense, in the statutory sense, the more pressure there is going to be for some administrative remedy, and the administrative remedies we have had in the past have proven to be more cumbersome and more consumptive of the Government's time and effort, I think, than the adjustment of status procedure has been.

Ms. MEISSNER. Mr. Chairman, let me give you a statistic: 85 percent of the adjustment of status cases that occur today are done on the basis of immediate family connections within the United States, that is relatives of U.S. citizens and permanent residents who are eligible under the law for immigrant visas. I cannot imagine any circumstance under which that relative adjustment would be precluded. Making this kind of change then would deal with about 15 percent, and clearly I think that there would be so many exceptions for that 15 percent that it probably would be an ineffective gesture, as much as it makes sense on paper.

Senator SIMPSON. So as with everything else in our policies, family reunification takes the same impact here as it does in any other area.

What is the percentage of other groups in the remaining 15 percent?

Ms. MEISSNER. I don't know. We would be able to develop that information, but I don't have it with me.

[Information subsequently submitted follows:]

Table 4

ALIENS ADMITTED, BY CLASSES UNDER THE IMMIGRATION LAWS
YEAR ENDED SEPTEMBER 30, 1979

CLASS OF ADMISSION	1979
ALIENS ADMITTED	7,520,430
IMMIGRANTS 1/	460,348
IMMIGRANTS SUBJECT TO NUMERICAL LIMITATIONS	279,478
RELATIVE PREFERENCES	213,729
1ST PREFERENCE - UNMARRIED SONS AND DAUGHTERS OF U.S. CITIZENS AND THEIR CHILDREN	5,107
2ND PREFERENCE - SPOUSES, UNMARRIED SONS AND DAUGHTERS OF RESIDENT ALIENS, AND THEIR CHILDREN	100,681
4TH PREFERENCE - MARRIED SONS AND DAUGHTERS OF U.S. CITIZENS, THEIR SPOUSES AND CHILDREN	15,714
5TH PREFERENCE - BROTHERS AND SISTERS OF U.S. CITIZENS, THEIR SPOUSES AND CHILDREN	92,227
OCCUPATIONAL PREFERENCES	37,709
3RD PREFERENCE - IMMIGRANTS IN PROFESSIONS	5,075
6TH PREFERENCE - OTHER WORKERS	11,623
THEIR SPOUSES AND CHILDREN	21,011
7TH PREFERENCE 2/	13,079
NONPREFERENCE 3/	1,341
ALIENS ADJUSTED UNDER SECTION 244, INA ACT	7
FOREIGN GOVERNMENT OFFICIALS ADJUSTED UNDER SECTION 13 OF THE ACT OF SEPTEMBER 11, 1957	-
IMMIGRANTS SUBJECT TO NUMERICAL LIMITATIONS (RECAPTURED CUBAN NUMBERS SILVA V LEVI)	13,413
IMMIGRANTS EXEMPT FROM NUMERICAL LIMITATIONS	180,870
IMMEDIATE RELATIVES	138,178
WIVES OF U.S. CITIZENS	46,902
HUSBANDS OF U.S. CITIZENS	33,879
CHILDREN OF U.S. CITIZENS	25,679
ORPHANS ADOPTED ABROAD OR TO BE ADOPTED	4,864
OTHER CHILDREN	26,815
PARENTS OF U.S. CITIZENS	31,718
SPECIAL IMMIGRANTS	5,913
MINISTERS OF RELIGION, THEIR SPOUSES AND CHILDREN	1,368
EMPLOYEES OF U.S. GOVERNMENT ABROAD, THEIR SPOUSES AND CHILDREN	989
CHILDREN BORN ABROAD TO RESIDENT ALIENS OR SUBSEQUENT TO ISSUANCE OF VISA	3,794
ALIENS ADJUSTED UNDER SECTION 244, INA ACT	-
ALIENS ADJUSTED UNDER SECTION 249, INA ACT	262
IMMIGRANTS, ACT OF SEPTEMBER 11, 1957	-
HUNGARIAN PAROLEES, ACT OF JULY 25, 1958	4
REFUGEE-ESCAPEES, ACT OF JULY 14, 1960	-
IMMIGRANTS, ACT OF SEPTEMBER 26, 1961	-
IMMIGRANTS, ACT OF OCTOBER 24, 1962	4,647
SPOUSES OF U.S. CITIZENS AND THEIR CHILDREN, ACT OF APRIL 7, 1970	11,378
IMMIGRANTS, ACT OF OCTOBER 12, 1976 4/	20,666
IMMIGRANTS, ACT OF OCTOBER 30, 1977	84
OTHER IMMIGRANTS NOT SUBJECT TO NUMERICAL LIMITATIONS	

1/ AN IMMIGRANT IS AN ALIEN ADMITTED FOR PERMANENT RESIDENCE. A NONIMMIGRANT IS AN ALIEN ADMITTED IN TEMPORARY RESIDENT ALIENS WHO HAVE ONCE BEEN COUNTED AS IMMIGRANTS ARE NOT INCLUDED.

2/ 1979 INCLUDES 12,242 CONDITIONAL ENTRANTS WHO MAY BECOME PERMANENT RESIDENTS AFTER 2 YEARS' RESIDENCE AND 837 ENTRANTS WHOSE STATUS WAS ADJUSTED UNDER SECTION 245 AND SECTION 203(A)(7)(A).

3/ INCLUDES PRIVATE BILL CASES.

4/ CUBAN REFUGEES EXEMPT NUMERICAL LIMITATIONS, RETROACTIVE 1968, COURT MANDATE, SEPTEMBER 25, 1976.

TABLE 6B.
ALIENS WHO WERE ADJUSTED TO PERMANENT RESIDENT STATUS IN THE UNITED STATES BY COUNTRY OR REGION OF BIRTH
YEAR ENDED SEPTEMBER 30, 1979

COUNTRY OR REGION OF BIRTH	TOTAL ADJUSTED	NUMERICAL LIMITATIONS						NO NUMERICAL LIMITATIONS							
		TOTAL	SEC. 244, IEN ACT - SUSPENSION OF DEPORTATION	SECTION 245, IEN ACT - NONIMMIGRANT TO IMMIGRANT				TOTAL	SEC. 244, IEN ACT - SUSPENSION OF DEPORTATION	SECTION 245, IEN ACT - NONIMMIGRANT TO IMMIGRANT					
				OCCUPATIONAL PREFERENCES	OTHER PREFERENCES	NON-PREFERENCES	OTHER			PARENTS, SPOUSES, & CHILDREN OF U.S. CITIZENS	OTHER	SEC. 249, IEN ACT - CREATION OF RECORD OF ADMISSION	CUBAN REFUGEES	INDOCHINESE REFUGEES	ACT IP 4/7/70 - SPOUSES OF U.S. CITIZENS & THEIR CHILDREN	OTHER
ALL COUNTRIES ...	128,901	47,766	7	9,509	37,178	672	-	81,235	-	43,829	442	262	11,378	20,686	4,647	11
EUROPE	19,011	9,586	-	2,255	7,309	22	-	9,429	-	8,069	104	63	81	18	1,086	-
AUSTRIA ...	168	71	-	29	42	-	-	97	-	83	-	-	-	-	13	-
CZECHOSLOVAKIA ...	185	108	-	21	87	-	-	77	-	72	1	1	-	-	3	-
DENMARK ...	189	104	-	24	80	-	-	85	-	70	-	-	-	-	15	-
FRANCE ...	878	362	-	120	242	-	-	516	-	438	1	-	-	11	66	-
GERMANY ...	2,089	733	-	200	531	2	-	1,356	-	1,078	1	-	-	-	277	-
GREECE ...	893	342	-	42	300	-	-	551	-	501	1	3	-	-	45	-
HUNGARY ...	308	170	-	21	149	-	-	138	-	125	-	-	-	-	13	-
IRELAND ...	441	224	-	59	164	-	-	217	-	174	16	3	-	-	24	-
ITALY ...	1,704	734	-	98	635	-	-	970	-	872	3	12	1	-	82	-
NETHERLANDS ...	587	343	-	86	257	-	-	244	-	215	7	-	-	-	22	-
POLAND ...	1,676	1,066	-	130	934	2	-	610	-	583	11	3	-	-	11	-
PORTUGAL ...	702	394	-	68	326	-	-	308	-	247	3	3	-	-	55	-
ROMANIA ...	347	200	-	48	152	-	-	147	-	117	12	1	-	-	16	-
SPAIN ...	721	250	-	94	156	-	-	471	-	330	22	1	76	2	40	-
SWEDEN ...	408	217	-	63	154	-	-	191	-	163	-	3	-	-	25	-
SWITZERLAND ...	336	158	-	56	102	-	-	148	-	127	-	2	-	-	19	-
U.S.S.R. ...	456	321	-	41	279	1	-	135	-	120	1	10	-	-	3	1
UNITED KINGDOM ...	5,451	3,028	-	889	2,129	10	-	2,423	-	2,067	23	16	2	3	312	-
YUGOSLAVIA ...	738	390	-	50	337	3	-	348	-	332	1	-	-	1	14	-
OTHER EUROPE ...	764	371	-	116	253	2	-	393	-	355	1	5	-	-	32	-
ASIA	54,271	16,887	3	4,465	12,372	47	-	37,384	-	14,350	158	33	97	20,634	2,196	6
CHINA & TAIWAN ...	4,407	2,514	1	818	1,694	1	-	1,893	-	1,691	20	21	2	39	114	6
HONG KONG ...	1,026	353	2	57	294	-	-	673	-	566	10	-	-	27	72	-
INDIA ...	2,734	2,012	-	856	1,143	13	-	722	-	649	22	-	5	-	46	-
INDONESIA ...	322	196	-	38	158	-	-	126	-	89	12	-	-	-	5	-
IRAN ...	5,346	2,697	-	298	2,392	-	-	3,149	-	3,115	16	-	-	2	16	-
IRAQ ...	491	296	-	26	267	3	-	195	-	188	2	-	-	-	5	-
ISRAEL ...	1,529	816	-	145	671	-	-	713	-	633	10	-	-	-	70	-
JAPAN ...	1,999	1,087	-	388	695	4	-	912	-	743	2	1	-	5	161	-
JORDAN ...	725	317	-	14	303	-	-	408	-	404	1	-	-	-	3	-
KOREA ...	2,602	1,234	-	242	990	2	-	1,368	-	719	21	-	-	4	633	-
LEBANON ...	1,562	1,016	-	139	877	-	-	546	-	525	11	-	-	-	10	-
PHILIPPINES ...	5,909	1,698	-	888	808	2	-	4,211	-	3,223	23	9	-	16	920	-
RYUKYU ISLANDS ...	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SYRIA ...	494	301	-	41	260	-	-	193	-	188	-	-	-	-	5	-
THAILAND ...	1,264	533	-	83	440	10	-	731	-	519	2	-	-	153	60	-
TURKEY ...	598	311	-	96	217	-	-	325	-	303	2	2	-	-	18	-
VIETNAM ...	16,181	325	-	11	109	5	-	15,856	-	116	3	-	-	15,725	12	-
OTHER ASIA ...	6,562	1,179	-	325	854	-	-	5,383	-	694	1	-	-	4,643	45	-

AFRICA	5,198	2,275	2	490	1,775	8	-	2,923	-	2,760	43	-	3	1	116	-	
EGYPT	775	415	2	66	367	-	-	360	-	323	18	-	-	-	19	-	
OTHER AFRICA	4,423	1,860	-	424	1,408	8	-	2,563	-	2,437	25	-	3	1	97		
OCEANIA	1,665	827	-	138	587	2	-	838	-	730	22	-	-	1	85	-	
AUSTRALIA	686	296	-	80	214	2	-	390	-	339	-	-	-	-	51	-	
OTHER OCEANIA	979	531	-	58	473	-	-	448	-	391	22	-	-	1	34	-	
NORTH AMERICA	38,784	13,096	2	1,683	11,047	334	-	25,688	-	13,209	95	165	11,256	8	954	1	
CANADA	5,747	3,158	-	638	2,498	22	-	2,589	-	2,174	27	36	52	2	297	1	
MEXICO	5,827	1,233	-	139	1,020	74	-	4,594	-	3,961	13	120	11	2	487	-	
BARBADOS	489	246	-	37	203	6	-	243	-	234	-	1	-	-	8	-	
CUBA	11,966	153	-	10	143	-	-	11,313	-	137	6	-	11,169	2	4	-	
DOMINICAN REPUBLIC	2,148	1,012	-	21	965	26	-	1,136	-	1,110	1	-	1	1	23	-	
HAITI	1,931	916	-	32	840	44	-	715	-	704	8	-	-	-	3	-	
JAMAICA	3,795	2,356	-	285	1,981	90	-	1,399	-	1,327	31	4	-	-	37	-	
TRINIDAD & TOBAGO	848	433	2	35	330	8	-	415	-	408	-	1	-	-	6	-	
COSTA RICA	489	182	-	8	171	3	-	307	-	291	2	-	7	-	7	-	
EL SALVADOR	624	301	-	22	275	4	-	303	-	281	3	-	5	-	14	-	
GUATEMALA	556	261	-	7	239	16	-	297	-	288	3	-	3	-	3	-	
HONDURAS	731	292	-	20	259	13	-	439	-	428	-	-	2	-	9	-	
NICARAGUA	733	313	-	10	302	1	-	390	-	381	-	-	5	-	4	-	
PANAMA	632	109	-	[illegible]	287	8	-	[illegible]	-	[illegible]	-	-	-	-	15	-	
OTHER NORTH AMERICA	3,136	1,934	-	408	1,505	21	-	1,222	-	1,174	3	3	4	1	37	-	
SOUTH AMERICA	9,672	4,695	-	478	3,958	259	-	4,977	-	4,711	20	1	31	4	210	-	
ARGENTINA	1,272	752	-	99	615	58	-	520	-	490	10	-	-	-	20	-	
BRAZIL	594	229	-	33	192	4	-	365	-	334	-	-	-	1	30	-	
CHILE	875	501	-	69	412	20	-	374	-	351	-	-	3	-	20	-	
COLOMBIA	2,315	1,009	-	79	835	95	-	1,366	-	1,283	5	-	10	2	66	-	
ECUADOR	1,076	478	-	30	416	32	-	598	-	585	1	-	2	-	8	-	
GUYANA	893	526	-	47	470	9	-	367	-	355	2	1	-	-	9	-	
PERU	1,533	673	-	63	585	45	-	830	-	793	-	-	12	-	25	-	
URUGUAY	270	141	-	27	112	2	-	129	-	118	-	-	3	-	8	-	
VENEZUELA	409	190	-	6	176	8	-	219	-	205	-	-	1	1	12	-	
OTHER SOUTH AMERICA	405	196	-	25	165	6	-	209	-	197	-	-	-	-	12	-	

Mr. SCULLY. Senator, if I might add a comment, the figures Ms. Meissner is talking about, the total number of people who adjust status, who acquire permanent residence through adjustment as opposed to an immigrant visa issuance abroad, I believe is roughly 20 percent of the total; something in that order, if I'm not mistaken.

So when she is talking about 85 percent and 15 percent, she is talking about the distribution of what is in effect 20 percent approximately of the total in the first place.

Ms. MEISSNER. The total adjustments are about 175,000 a year, and that is up considerably; 10 years ago that figure was about 50,000 a year, but it's not, because adjustment of status is bulging. It's because of the overall increased numbers of people coming to the United States.

Senator SIMPSON. And the figure you give there, all of those figures fit within the same substantive requirements of the law? We have the same preference system applying, and the same numerical limitations per country and all that; right?

Ms. MEISSNER. The numbers still have to be available.

Senator SIMPSON. Well, right now exclusion categories for the nonimmigrant and the immigrant are the same. That, I think, encourages adjustment of status. Do you think the exclusion category for nonimmigrant should be substantially simpler and less restrictive than for immigrants?

Mr. SCULLY. Mr. Chairman, I'm afraid it's not altogether clear to me precisely the connection. You're right that the exclusion provisions of section 212(a)—there are certain provisions that apply only to immigrants, but in general they apply equally to immigrants and nonimmigrants.

Now if, in fact, some of those grounds for exclusion were——

Senator SIMPSON. You're trying to determine whether any of those exclusions promote the adjustment of status situation.

Mr. SCULLY. It is not at all clear to me that they do, Mr. Chairman, because it seems to me other factors are the cause of the adjustment of status rather than the fact that the grounds of exclusion are the same, whether you're an immigrant or a nonimmigrant.

For example, it would seem to me that if you eliminated or rendered inapplicable to nonimmigrants some of the grounds of exclusion, so that they remained applicable to immigrants, but were no longer applicable to nonimmigrants, that might result in the admission of additional nonimmigrants who are not now admitted. That is undoubtedly true.

On the other hand, the nonimmigrants who are now admissible would remain admissible. So, in essence, all you would be doing would be increasing the number of nonimmigrants who could be admitted and adding to this group of nonimmigrants admitted, some additional nonimmigrants, who might not qualify for immigrant status.

You would not, however, be eliminating those nonimmigrants who do qualify for immigrant status, and so how these two things would connect is not at all clear to me.

Senator SIMPSON. Should those exclusionary categories be the same for visitors as for immigrants?

Mr. SCULLY. Well, now, certainly there has been discussion over the years of the question of eliminating, at least as to visitors or other nonimmigrants—perhaps nonimmigrants generally—some of the grounds of exclusion.

I think, however, that that is a separate subject. It would seem to me that's a subject that ought to be addressed in the context of the entire issue of what grounds of exclusion should there be rationally under our law for excluding aliens generally, without regard to this issue of acquiring permanent residence.

Senator SIMPSON. That is true. We are going to address that as a separate—that's going to be a very important hearing.

How many exclusion waivers do you have each year, are made each year for visitors?

Mr. SCULLY. I don't know that we have the numbers. I don't think that we have the numbers with us. Ms. Meissner might have them because, of course, that's a joint action with the two agencies. So it may be that Ms. Meissner has them.

Mr. ASENCIO. We could get them for the record.

Ms. MEISSNER. I don't have them.

Senator SIMPSON. Is it a large number or generally where does it fit?

Mr. SCULLY. I think it probably is nothing more than 20,000 to 25,000, perhaps, but that's strictly a guess, Senator.

[Information subsequently submitted follows:]

Waivers of exclusionary grounds for nonimmigrants (source: G–23)

Fiscal years:	
1980:	
Approved	38,888
Denied	247
1981:	
Approved	34,668
Denied	317

Senator SIMPSON. Just a couple more.

We are aware of a Japanese reaction to the E visa change made in October. Could you tell us a bit about that, and the reasons for that change on the E visa?

Mr. SCULLY. Yes, sir, if I may. We have had, of course, in our instructions to consular officers general guidance for many years on interpretation of the E provisions, as we have for all nonimmigrants and all the provisions of the law.

Now because the consular officer has the authority to issue or refuse visas without referral to the Department, and because we also cannot foresee in a hypothetical way every fact pattern that might arise, what you find is that the consular officer will take the general instructions that we have and he will examine individual applications and come to his own conclusion as to whether this particular applicant is entitled in this case to E–1 or E–2 status, as the case might be.

Now, over the years it appeared that there developed some practices at the post in Japan. Tokyo, Osaka-Kobe, they had made certain interpretations of which we were unaware, because these matters had not been raised with us.

Approximately a year and a half ago, in the normal process of officer transfers, new officers were assigned to the consular section

in Tokyo, and they examined some of the practices that existed there, and a question arose in their minds whether those practices and interpretations that were being used locally in fact were consistent with the overall interpretation of the law.

This resulted in the submission to the Department of a number of cases, fact situations and requests for the Department's opinion.

It developed that, in a number of these instances, the Department's opinion was that the previously existing interpretation that the post had been applying locally was not consistent with the overall interpretation of the law.

After a series of these opinions, a compilation was made of them and the individual opinions were distilled into some more detailed general guidance which was sent initially to the post in Japan, and subsequently to all posts abroad, and that has resulted in some changes in interpretation and some different decisions on visa applications by people claiming E-1 or E-2 status, than had been made in previous cases of a similar nature.

Now the Japanese perceived this as having some link with the whole issue of Japan-United States trade. There was, however, no relationship between that issue and the series of opinions and additional instructions. It was strictly a technical matter. I think that perhaps these cases may have arisen in Japan first, simply because the Japanese are at the forefront of business development, new corporate structures, and ways of doing business, and the issues became apparent there earlier than they had become apparent in other countries.

It might be of interest, however, that since we sent these revised or additional instructions to the posts worldwide, we have discovered that many of the same issues have presented themselves in other countries with whom we have treaties.

So there is nothing in this that is in any way directed at Japan. These instructions apply to all applicants regardless of nationality and it was just a fortuitous event that the questions first arose in connection with Japanese applicants rather than Norwegian or German or British or applicants of one of the other treaty nationalities.

Mr. ASENCIO. I might also add, Mr. Chairman, that we have made an effort jointly with INS to try to mitigate the effects of the change in the visa category and have offered continuing assistance in this regard.

Senator SIMPSON. Let me just ask a final question. Many who discuss this issue of status do so in some rather all-or-nothing terms. Could one make the holders of the B visas and F visas ineligible for adjustment or more restrictive?

It's our information that more than three-fourths of the over— well, this March figure of adjustment, does it apply to the 175, too, or three-fourths of those nonimmigrants whose adjustments come from those two groups?

Ms. MEISSNER. Eight-five percent of the nonimmigrants who adjust are adjusted on the basis of having relatives in the United States.

Senator SIMPSON. Yes, but do they come from the two areas of——

Ms. MEISSNER. I don't know the visa distribution, but it would be much broader than just the B and the F.

Senator SIMPSON. Could you furnish us those figures for the record?

Ms. MEISSNER. Yes, sir.

Senator SIMPSON. I think that would be helpful.

[Information subsequently furnished follows:]

Nonimmigrant classification of aliens [1]

Foreign government officials (A)	951
Visitors for business (B-1)	2,386
Visitors for pleasure (B-2)	55,409
Transits (C)	220
Treaty investors/traders (E-2/E-1)	1,305
Students (F)	14,728
Dependents of students (F-2)	1,288
Employees of international organizations (G)	696
Temporary workers and trainees	3,302
News media representatives (I)	27
Exchange visitors (J-1)	1,333
Dependents of exchange visitors	748
Employees of NATO (NATO)	1
Claimed U.S. citizenship	6
Parolees	3,071
Other	6,159
Total	91,630

[1] Nonimmigrant classification of aliens adjusting status under sec. 245 of the Immigration and Nationality Act in fiscal year 1979 (excludes adjustments and conversion of status under other statutes).

Source: INS Statistical Yearbook, table 16C.

Senator SIMPSON. We are using a figure of 100,000, that more than three-fourths of those came from these two groups.

Ms. MEISSNER. That's possible, but I can't verify that right now.

Senator SIMPSON. Do you have any comment on that?

Mr. ASENCIO. I can only imagine that since the B visa would be the largest group, there would naturally be a preponderance in that particular area.

Senator SIMPSON. Senator Grassley, do you have any questions?

Senator GRASSLEY. Presently there is no appeal of a consul's judgment not to issue a visa. Some say that there should be an appeal. What is your position on that?

Mr. SCULLY. Senator, there is no appeal in the formalistic sense. I mean there is no specific quasi-judicial or judicial appeal mechanism. There is review of visa denial, however.

We have, I think, a fairly systematic procedure administratively. First of all, every denial must be reviewed by a supervisory officer at that post. What is more, the visa office receives many, many, many inquiries from interested parties—Members of Congress, relatives, friends, prospective employers, whoever may be interested in a case—about denials in individual cases, and in the process of obtaining information from the consular office to respond to that inquiry, we have occasion to review the information presented by the consular officer, and the Department does have the authority to instruct the consular officer concerning a point of law. We cannot review factual findings. We cannot bind him on factual determinations, but if the consular officer has made a decision which

is incorrect as a matter of law, we have authority to instruct him as to the correct interpretation of the law and to bind him.

Now this we consider to be a very important aspect of the Department's role in the visa operation, for purposes of assuring uniform and correct application of the law. We consider review by the supervisory officer an important element in assuring equity and uniformity in the system.

I think that if there were a formalized appellate mechanism, some sort of formalized review board, which it seems to me would almost inevitably entail the possibility of judicial review, that one might very well be creating a nightmarish administrative problem for the Government, and it seems to me it also raises the question as to whether or not an alien who is a nonresident outside the United States has a right which can be protected constitutionally in this particular context.

So I think that our view would be that a formalized appellate mechanism, quasi-judicial or judicial, would be administratively extremely burdensome and difficult to deal with, and it would raise certain questions as to what is the true reach of the U.S. Constitution? Is it planetary or is it confined essentially to the United States?

Mr. ASENCIO. In practical terms, I might add, since we are talking about the issuance of about 8 million visas a year, and I would imagine just extrapolating on refusals, we would have to probably add another 25 to 30 percent of cases. You are not talking about a minor wrinkle in the law, but something that would have a major impact with regard to resources and the way we do business.

Senator GRASSLEY. Thank you.

Senator SIMPSON. Thank you very much, Senator Grassley. I always appreciate your participation in this subcommittee's activities. You have been very helpful and supportive throughout.

Well, I think that concludes that portion of the hearing. Thank you very much.

Ms. MEISSNER. May I just make one point?

Senator SIMPSON. Yes, please.

Ms. MEISSNER. And that is on the discussion that was held on the exclusion provisions. It seems to me as I understand the issue, you are really thinking about it not so much from the point of view of adjustment of status, but whether there simply ought to be different standards for people who are going to immigrate and therefore be permanent members of our society, and those who are coming temporarily for one purpose or another.

As you know, the administration didn't take any position on the question of exclusions in its policy deliberations earlier this year, but the INS can envision a system under which there would be different standards for immigrants than for nonimmigrants, and we would welcome working with you as you develop your ideas on that subject.

Senator SIMPSON. So you certainly feel that there should be different standards there?

Ms. MEISSNER. I'm not prepared to say that we feel there should be different standards, but there are circumstances that make it very difficult to enforce the exclusion provision, particularly with regard to nonimmigrants, and making a distinction between immi-

grant and nonimmigrant might be a useful way of avoiding some of the problems that we have all experienced in that area.

Senator SIMPSON. Even more extraordinary problems with the exclusionary aspects, and the degree thereof, with regard to refugees. [Laughter.]

We have people who have expressed to the subcommittee that we ought to tighten that up, and I say there is such a huge difference between refugee and immigrant, especially in the area of application of exclusions, a totally different situation, but a tough one.

Well, anyway, thank you very much. You have been very helpful, as usual.

Mr. Scully, you have been very helpful to the subcommittee throughout and they have expressed that to me, and I am most appreciative.

Mr. SCULLY. I thank you, Senator, for those kind words.

Senator SIMPSON. And, of course, thank you, Diego and Doris. You have been very helpful. I'll see you next year at the same table.

Let's see, now, we have Mr. William Cagney, National Foreign Trade Council of New York; Austin Fragomen, chairman of the board of the American Council on International Personnel of New York; Harold Ammond, director of the Council of Engineers and Scientists Organization, Haddonfield, N.J.; and Mr. Irwin Feerst, president of the Committee of Concerned Electrical Engineers of Massapequa Park, N.Y.

How was that?

Mr. FEERST. Pretty good, Senator. Pretty good.

Senator SIMPSON. Pretty good for a flatlander from Wyoming.

We will wait just a moment as the people disperse.

If we could please have quiet in the hearing room.

Mr. Cagney, please, and I think you know the time limitations that are upon us, and we appreciate your testimony.

STATEMENT OF WILLIAM F. CAGNEY, NATIONAL FOREIGN TRADE COUNCIL, NEW YORK, N.Y.

Mr. CAGNEY. I am William F. Cagney, director of Industrial Relations and Management Resources of the National Foreign Trade Council, Inc., a nonprofit association of over 650 U.S. companies engaged in foreign trade and investment.

I have previously testified at the November 23 hearing of the subcommittee which dealt primarily with preference categories and the labor certification process.

As requested, I would like to stress on behalf of the council our recommendations on nonimmigrant visas and the adjustment of status process.

Recommendation No. 1. On L-1 visas, we would like to have reputable companies authorized to handle their own L-1 visa programs for managerial executive and specialized knowledge staff, such as is now authorized for the exchange visitor or J-1 programs.

After authorization by INS, these companies could administer and police their own programs with periodic reports to a centralized unit of the INS. A more complete statement of that recommendation is contained in our bulletin 3717 of January 9, 1981, which

was duly included in the subcommittee hearing record of November 23.

We would like to see some relaxation of the current prohibition against spouses of the L-1's from working in the United States. This is an irritating factor for many of the companies bringing foreign nationals in on the L-1 visa. Many of the spouses are talented and educated and anxious to pursue meaningful employment during their stay in the United States. They could well be permitted to seek appropriate employment without upsetting our labor market here. The numbers involved are insignificant.

Recommendation No. 2. Extension of the H-1 and H-3 temporary visas for an initial period of the anticipated length of stay, perhaps limited to 3 years. This privilege was recently granted by the INS for the L-1's, eliminating the unnecessary and time-consuming procedure which heretofore required annual renewals, bogging them down in paperwork and restricting the mobility of such personnel.

Granting the same privilege to the H-1's and H-3's would not bring about any undue relaxation of control by the INS and would be cost-effective for them.

Recommendation 3. Granting of a long-term visa, say up to 10 years. With the growth of multinational corporations and their international management requirements, we believe there is good justification to establish a new nonimmigrant visa category which would allow persons classifiable as H-1 or L-1 nonimmigrants to stay beyond the 4- or 5-year periods which may now be available under those categories.

This visa would be available when the petitioner could demonstrate that the alien would be assigned to a project or activity requiring more than 4 or 5 years for completion; but nevertheless that the alien intends to return to his home country at the end of this assignment. A maximum 10-year stay would be allowed.

This long-term nonimmigrant visa would have the beneficial effect of not drawing down the limited visa numbers available for permanent resident status under our preference category system.

Fourth, facilitate the granting of adjustment of status petitions for those on nonimmigrant visas, coupling this with the automatic granting of parole to avoid interfering with international travel requirements.

The adjustment of status process from an L-1 or H-1 category to a permanent resident status is a long, drawn-out procedure at the present time. The INS has, however, made some efforts to improve this by their upfront adjudication facility which requires personal appearance with all papers in order; however, there is much to be done to improve the efficiency of that operation.

While the adjustment of status petition is in process for adjudication, the individual currently is not permitted to travel internationally unless a separate letter of parole is granted. This parole authorization could reasonably be granted at the time of the filing of the adjustment of status petition, with an appropriate statement from the company or completion of an INS-designed form. Or it could simply be stamped on the passport.

The council wishes to stress the need for the INS to expeditiously grant decisions on business-related applications or petitions so

there can be a reasonable degree of certainty on planning of moves. This is critical.

We would also like to see a greater degree of consistency between the regional offices of INS in determination of policy and the regulations.

One other critical area stressed by our member companies is in the undue restriction on mobility of nonimmigrant personnel. They are people who have important international responsibilities, requiring frequent visits to their branches and subsidiaries overseas.

Our recommendations would help on cost-effectiveness and budgetary considerations.

I thank you very much.

Senator SIMPSON. Thank you, sir. I appreciate that very much, Mr. Cagney. And now Mr. Fragomen.

STATEMENT OF AUSTIN T. FRAGOMEN, CHAIRMAN OF THE BOARD, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL, NEW YORK, N.Y.

Mr. FRAGOMEN. I would again like to extend my gratitude to the members of the committee for according ACIP the opportunity to testify on this vital issue. Because of the ongoing need to move personnel on an international basis, and because it has such a significant impact on the U.S. economy and is so intimately related to the international trade and commerce of the United States, ACIP believes that it must be one of the primary considerations in any revision of the nonimmigrant classification system.

The problems of nonimmigrant vs. immigrant intent probably are the most significant problems in the nonimmigrant area. An applicant for a nonimmigrant visa must establish that he has no intent to remain in the United States permanently.

This should not be a factor in all nonimmigrant categories, as it is presently. For those categories such as visitors where the concept should be retained, criteria should be set forth in the law.

In cases of the L visa, the issue of intent should be eliminated. How can a multinational corporation effect an important permanent transfer of an employee when delays in excess of 1 year are commonly experienced in applying for permanent residency status?

Needed personnel are needed now. Why not allow key personnel to be transferred promptly, notwithstanding the fact that the transfer may be permanent in nature? This could be accomplished by amending the intent section of the law or by creating a new visa category which would permit persons to enter the United States on the same basis as the K visa holder, where the intent is to remain permanently.

Another recommendation would be to establish an L visa program which would be similar to a J visa program, and the idea here would be that rather than putting the whole petitioning burden on the consular post, the company who wished to qualify for such a program would file papers or make a formal application with the Government, with the Immigration Service, and they then would authorize that company to transfer any managerial executive or specialist personnel who had the year's requisite experience abroad. They would authorize transfer of such persons where the

entitlement has been demonstrated to the consular post, and that way you could retain the basic substance of the L visa and yet facilitate these transfers and take a major burden off of the Immigration Service in the adjudications process.

Another major problem is the lack of definition of terms of art, such as the term "affiliate." The term "affiliate" has led to such inconsistent interpretations as prohibiting a major accounting firm such as Price Waterhouse from transferring personnel from offices abroad to the United States because there isn't common control vested in one organization.

I think that for affiliation, we should look to substantial investment, plus substantial active participation. We should look to the degree of interdependency rather than artificial criteria of control.

We fully concur with Mr. Cagney that the period of validity of L should be extended for as long as the person intends to remain in the United States temporarily, and ultimately depart, rather than forcing persons to apply for permanent residence. This is already done in the case of E visaholders, and I don't think that it would create any problem to extend the same interpretation to the L category.

The prohibition upon spouses working probably creates the greatest single personnel problem within multinational corporations as more and more spouses wish to enter the employment market, and what I would recommend regarding the employment of spouses is that the same criteria could be used as in A and G visa cases, for diplomats and international government employees, where the spouse can get permission to work where it can be demonstrated that the type of work she is doing would not have an adverse effect on the employment market.

We espouse the creation of a new nonimmigrant class that would be tantamount to the E-2 visa, where a person would be able to come to the United States and either make investments or oversee his investment.

One of the problems under our law is that many of the restrictions in the nonimmigrant area force persons to apply for permanent residence, regardless of whether they want to do so, and I think that this is an example of that. If we had a category that allowed persons to spend a good deal of time in the United States without becoming residents, kind of a long-term temporary visa, where they are persons of substantial means and are not going to be directly entering the employment market, that would be tremendously helpful.

Finally, I would just like to say that no matter how many changes are made in the nonimmigrant visa category, that unless the Immigration Service wipes out the backlogs, makes prompt adjudications, and responds to the public in a meaningful way, it will all be for naught.

Thank you.

Senator SIMPSON. Thank you very much.

Mr. Ammond, please.

[Mr. Fragomen's prepared statement follows:]

PREPARED STATEMENT OF AUSTIN T. FRAGOMEN, JR.

Mr. Chairman and Members of the Committee:

My name is Austin T. Fragomen, Jr., and I appear before you today in my capacity as Chairman of the Board of the American Council on International Personnel, Inc. (ACIP), an organization comprised of major multinational and national corporations and institutions with a continuing interest in the movement of international personnel across national borders. I am pleased once again to have the opportunity to discuss the reform of this country's immigration laws. When I last appeared before you on November 23, 1981, I set forth the views of ACIP with regard to changes in the preference system. Because of the nature of the business and other activities engaged in by the members of ACIP, our organization is equally interested in the development of a fair, equitable and streamlined system permitting the temporary entry into the United States of qualified nonimmigrants.

We believe that a fair and equitable system not only requires procedural changes to facilitate the movement of qualified persons across our borders, but also necessitates a revision of the categories through which qualified nonimmigrants can secure admission to this country. In enacting the necessary substantive and procedural changes, due consideration should be given to the many legitimate needs of both United States and multinational businesses and corporations expeditiously to move various classes of essential personnel across national borders. While it is true that attempts have been made over the years to accommodate the needs of business executives, such as the institution of the intracompany transferee (L) classification in 1970, these attempts have not fully resolved the travel and relocation difficulties encountered by the business community. This community now calls for reasonable measures to end those difficulties. Because the

ongoing need to move personnel on an international basis has such a significant impact on the United States economy and ~~is~~ so intimately related to international trade and commerce, ACIP believes that it must be one of the primary considerations in any revision of the nonimmigrant classification system. I therefore propose today a number of revisions to the present classifications and procedures for nonimmigrant entry into the United States. These revisions would further facilitate international commerce while assuring the integrity of the United States immigration system.

The Nonimmigrant Classification System

The existing categories for nonimmigrant entry into the United States are set forth in the definitional section, §101, of the Immigration and Nationality Act (the Act). Nonimmigrant classifications are included in the Act, but only as categories excluded from the definition of "immigrant." Under the definition of "immigrant," all applicants for admission, immigrant and nonimmigrant alike, are presumed to be intending immigrants unless they can affirmatively demonstrate that they fall into one of the specified nonimmigrant categories.

The artificial dichotomy between the intent to become an immigrant and qualification for nonimmigrant status creates an unnecessary impediment to nonimmigrant entry for many persons with bona fide reasons for seeking temporary admission into the United States. The presumption of immigrant intent is demonstrably inaccurate in the vast majority of cases and only tends to create an element of administrative skepticism toward all nonimmigrant applications, making the nonimmigrant applicant's normal burden of proving his eligibility for admission more difficult than it should reasonably be. Moreover, with many classes of aliens, particularly business personnel with valuable skills who are coming to work in this country for extended periods of time on

nonimmigrant visas, it should make little difference whether it is their intention to eventually immigrate permanently. Their present need to be in the country for legitimate business reasons on a temporary basis should qualify them, regardless of their long-term intent, for a nonimmigrant visa to enter the United States. The issue of intent and temporariness of stay, we suggest, is best addressed on a category-by-category basis rather than established by the current single standard, which applies indiscriminately to all nonimmigrant categories.

In place of the unnecessary presumption incorporated in the present Act, we suggest that a simple provision be incorporated under each of the nonimmigrant categories which would place on the alien the burden of establishing his qualification for nonimmigrant classification. This provision would sufficiently meet the needs of assuring control over immigration to the United States while permitting those persons with legitimate reasons to enter the country on business to do so without undue obstacles that only serve to detract from the national interest.

For those categories in which the intent of the person seeking admission to the United States is considered a relevant concern, that element can be incorporated by simply specifying that an applicant must have no present intention of remaining in the United States permanently. In order to avoid the present problem of inconsistent determinations on the issue of intent, statutory language should also be included delineating the factors germane to the issue, such as the intended purpose of the trip to the United States, the intended duration of stay, and the applicant's previous immigration history.

Whether or not a lack of intention to remain in the United States permanently is required for a particular nonimmigrant category, the statute should clearly specify that when an

applicant can establish eligibility for visa issuance or admission, and no articulable reason exists for refusal or exclusion, the visa shall be issued and the applicant duly admitted. This mandatory language, together with a requirement of articulable reasons for a denial, would make explicit what should already be obvious -- a denial of nonimmigrant benefits must not be arbitrary or without sound foundation in the facts presented to the adjudicating officers.

These general recommendations relating to the entire nonimmigrant classification system represent changes that are necessary to assure a fair and equitable system for conferring nonimmigrant benefits under the Act. Because the burden of establishing eligibility would remain on the applicant, the necessary safeguards to prevent fraud and misuse of the classification system would remain, while the surplusage that currently weighs down the system, making it operate inefficiently and inconsistenly, could be eliminated.

Visa Categories Commonly Used by the Business Community

Many of the present nonimmigrant visa categories are viable tools for the business community in transferring personnel to the United States and permitting business travel into this country. Nevertheless, gaps exist in the present set of categories which often frustrate legitimate business transactions. The result often is the loss of valuable business time and resources, which can cause direct economic loss to the United States. For example, a United States office of an international accounting concern might wish to institute a new system currently in use in an overseas branch office, and for that purpose wishes to bring to this country, perhaps for an extended period, the employee responsible for establishing the system. If, however, each office is an individual partnership under local law, and the only tie between them is through an umbrella organization which establishes firm policy and procedures but has minimal financial oversight, it

is likely that the transfer of this employee could not be effected under present law. Alternatively, if the two offices are considered affiliates but the employee has not been with overseas office for a full year, his transfer would also be difficult to effectuate.

As another example, a company might want to bring into this country a highly skilled engineer to work on a vital energy project that is projected to last seven to ten years. While the engineer would qualify for H-1 classification as a member of the professions, it is highly unlikely that he would be able to remain in the country for that period of time in H-1 classification. While L-1 classification is more likely to be accorded for a longer period, if the engineer has not worked for an affiliate of the company abroad for a year, or has never worked for the company before, he is ineligible for such a visa. The only "solution" to this situation is for the company to seek permanent residence for the engineer whether or not he desires such status. This solution results in the waste of immigrant visas while subjecting the company and the government to the burden of the inordinate amount of paperwork required by a permanent residence petition.

I hope these examples give you some insight into the complex problems and unsatisfactory solutions that the present immigration law foists on the multinational or national corporation which seeks to effect routine personnel decisions. In the examples I have given, the difficulty in bringing in the key personnel described would almost surely result in substantial financial detriment to the companies involved, and would adversely affect domestic economic activity and employment opportunities which these key employees might have generated. This result should be unacceptable to any reasonable observer.

Despite the major adverse impact of the law's current deficiencies, the gaps that exist in the present classification system can be adequately filled with only a few changes. These changes should take two forms: First, the refinement of present nonimmigrant categories to more closely suit the demonstrated needs of the business community; and second, the creation of several new nonimmigrant categories to fill obvious voids in the present Act. I will briefly outline for you the desired changes in the present business-related categories to illustrate how a few minimal reforms would provide better and well-justified coverage of common personnel needs. Where the gaps in the system are too large to fill with such changes, I will suggest the best structure for new categories to cover those gaps.

Intracompany Transferees (L-1 Category)

The centerpiece of any change in the nonimmigrant classification system designed to benefit the business community is the streamlining of the present mechanism for transferring employees from offices abroad into the United States. The institution of the L-1 category in 1970 was an acknowledgment of the continuing need of multinational corporations to move personnel among their many branches. The system devised for making such transfers -- individually-approved petitions for each such transfer -- failed, however, to account for just this continuing need. In contrast, an organization that seeks to regularly bring persons to the United States for training purposes need not obtain individual approvals from the Immigration and Naturalization Service for each such person once the organization has established a training program under §101(a)(15)(J) of the Act and has received approval for the program from the International Communication Agency. Once the approval has been obtained for the J program, the organization can issue documentation directly to the alien, who can submit this documentation to the consul along with his visa application.

The J-1 visa program is a good prototype for a similar program for intracompany transferees. The determinations to be made with the regard to qualification for L status are relatively simple ones. The United States company must show the existence of a qualifying business relationship with the alien's employer abroad, it must show that the alien has been employed abroad with the foreign employer for at least one year, and that he will be employed in the United States in a managerial or executive capacity, or in a capacity requiring specialized knowledge.

The first fact -- the requisite business relationship -- could be established by a company as a part of the application for approval of an L program for intracompany transferees. Once the approval of such a program has been received, the United States employer would be empowered to issue appropriate documentation, similar to the Form IAP-66 currently issued by an approved J program, to the qualifying alien. This documentation would be prima facie proof that the alien is being transferred between legal business entities that qualify for consideration as having the requisite corporate relationship. The documentation could also certify that the alien has been employed for one year with the employer abroad, and give a description of the position to be filled by the alien in the United States. Upon the transferee's presentation of this documentation to the consul, all of the information necessary for issuance of an L-1 visa would be at the consul's disposal. The only determination that might be left in his hands would be whether the occupation to be filled in the United States is one involving managerial or executive skills or specialized knowledge. This determination is essentially the same one made by the consul in issuing E-1 treaty trader visas, and would impose no undue burden on the consul.

Once an L program had been approved, the need for individual petitions would be obviated, and the sole determination needed

would pertain to the issuance of the visa by the consul. This streamlining of the present system would immeasurably aid multinational companies in making transfers, by assuring that the transfer could be made in a timely manner consonant with the business objectives underlying the transfer.

Once the alien is in the United States, his presence could easily be controlled and recorded by several methods. Each year the L program sponsor could be required to file a report listing all L program participants currently in the United States. On the departure of each L program participant the program sponsor might be required to report the termination of that participant's stay. Alternatively, an annual report form submitted by intracompany transferees could be required, which would be similar to the report form filed annually by treaty traders and investors in the E classification.

In view of the adequate means available to control the presence of the program participants, the intracompany transferees could ideally be admitted for the duration of their status. Since many intra-company transferees travel frequently, however, the actual length of the approved period of admission is less important than the period of validity of their visas. Adequate provision must be made for visas of extended validity permitting multiple entry, so that intracompany transferees may travel freely in order to carry out their responsibilities as part of multinational and national corporations. When the initial application for the visa is made, the documentation from the L program sponsor could specify the anticipated length of employment in the United States, and the visa could be issued for that period. At a minimum, validating visas for more than the current one year period is essential to effectuate the policy underlying the existence of the L category.

Apart from the institution of an L program similar to the current J program, two changes in the language of the statute would further enhance the ability of corporations to smoothly effectuate needed transfers of personnel to the United States: (1) institution of a clear and realistic standard to determine the existence of the requisite relationship between the employer abroad and the United States employer, and (2) elimination or modification of the requirement of a "temporary" stay in the United States.

The statute now requires that the overseas employer of the alien must be a parent, affiliate, subsidiary or branch office of the prospective United States employer. No problem of definition arises when the foreign employer is a branch office of the same corporation with which the alien will be employed in the United States. Tremendous difficulty and a resultant inconsistency in adjudication has arisen, however, with regard to cases involving parent-subsidiary and affiliate relationships. Some INS offices have established a requirement that a parent company own more than 50% of the stock of the subsidiary, or that the two affiliates be majority-owned by a common parent. A related problem has arisen regarding the legal form of the parent or subsidiary. Some INS offices do not recognize transfers involving a sole proprietorship or a partnership as opposed to a corporate entity.

These policies, emanating from INS district and regional offices, place unnecessary restrictions on bona fide business transfers, which in no way further any legitimate immigration policy. They can easily be eliminated if the statute is revised to provide a practical definition of affiliate and parent-subsidiary relationships. First, the statute should be revised to make clear that any legally cognizable business entity is a qualified employer to participate in an intracompany transfer. Partnerships in particular should be permitted to transfer

employees from one office to another. Second, the terms "affiliate" and "subsidiary" should be defined to make clear that "effective control" and not majority ownership is the essential element of the relationship between the business entities. Even better would be a definition permitting transfers of personnel between closely associated business entities with a high degree of interdependency. While the level of association required might specifically exclude a simple contractual relationship or a master-agent relationship, it should not exclude such legitimate business associations as individually-owned partnerships existing under an umbrella organization or franchises operating under a common name and with mandatory practices and purchasing agreements. These business organizations often have legitimate needs to transfer personnel, such as to bolster a weak franchise with a strong manager from a successful one, and the very fact of the transfer demonstrates the interrelationship between the individual operations.

The second problem that I have mentioned with respect to statutory definition -- the requirement of a "temporary" stay -- is more complex, and requires scrutiny of the very foundations of the nonimmigrant system. As I have already stated, the artificial dichotomy between immigrant intent and nonimmigrant status creates many anomalous situations in which persons with legitimate nonimmigrant purposes for entering the country cannot obtain a nonimmigrant visa because of a presumed intent to become a permanent resident. The problem of immigrant intent is often magnified in the case of intracompany transferees by various circumstances that are often unavoidable given the nature of corporate decision making. In many cases, for example, no clear termination date to a transfer can be pinpointed. In fact, the transfer of an employee may well be indefinite, though not necessarily permanent. Only after the employee has spent a period

of time with the United States office will a company be able to ascertain the continued need for the services of an intracompany transferee on a permanent basis. This uncertainty at the inception of the transfer is inconsistent with the INS precedent decisions that have defined "temporary" to require a fixed termination date, in contrast to an "indefinite" stay. Realistically, then, the "temporariness" requirement imposes an impractical requirement on many corporations, while not furthering any reasonable aim of the immigration system.

By removing the temporariness requirement, the ability of intracompany transferees to travel for the purpose of transacting international business would be particularly enhanced for those who have filed permanent resident papers. Under present circumstances, once an application is filed to adjust status to that of permanent resident, the alien is not permitted to travel pending adjudication of the application. Even under the newly-instituted procedure for up-front adjudications, the final decision on adjustment applications often is not rendered for as many as five or six months after the initial filing. Only through the time-consuming, inefficient procedure of advance parole can permission to travel be obtained, and then only if an unusual business necessity makes the trip essential.

Even when an adjustment application has not been filed, the mere filing of a preference petition by the alien's employer or the commencement of the labor certification process is often found to be a bar to renewal of L-1 status, despite directives from the INS and the State Department that the filing of such papers is not per se a bar to renewal. By removing the temporariness requirement, it would be clear that filing for permanent residence or having no fixed termination date for a tour of duty in the United States is not inconistent with maintaining L-1 status and travelling on an L-1 visa. The need for advance paroles would

then be eliminated, thereby saving valuable INS resources for the adjudication of petitions and applications.

As an alternative to removing the "temporariness" requirement from the L-1 category, ACIP would like to propose the creation of a new nonimmigrant visa category that would apply to qualified intracompany transferees (and quite possibly other qualified applicants such as those in the H-1 category) who, from the start, manifest an intention to become a permanent resident. The category, to be designated (M), would be analogous to the K visa category through which aliens may be admitted who plan to marry U.S. citizens within 90 days of their admission. The M visa-holder would be required to initiate an application for adjustment of status to that of lawfully admitted permanent resident within a specified period of time. This category would permit a corporation to immediately utilize the needed skills and services of the alien while the permanent residence process moves forward. Since it is likely that even under proposed revisions to the preference system, some backlogs in visa availability will continue, the (M) category would permit legitimate transfers of personnel while preserving the integrity of the immigrant visa.

As a final alternative to the proposed (M) category, and to the proposal for an indefinite or duration-of-stay period of admission for L visa holders, a new category could be instituted that would supplement the present L category by providing for a period of stay exceeding the current three-year period available to current L visa holders. Under this visa category, an applicant must meet all of the usual requirements for the L (and possibly H) visa, except that it would be anticipated that his services would be needed for a period from four to ten years. While this category would be unnecessary under the restructuring of the L category previously suggested, it would provide at least some redress for the flaws in the present system in the absence of such restructuring.

The H-1 Category for Member of the Professions

When a corporation or other organization wants to hire an alien who has no previous employment experience with an affiliate, parent, subsidiary or branch office abroad, the H-1 category is often the only viable means to bring the alien into the United States. This category, which applies to persons of distinguished merit and ability, has been interpreted through INS precedents to apply also to members of the professions, as that term is defined in §101(a)(32) of the Act. While the application of the H-1 category to members of the professions is fairly well-established, the "professions" included in that coverage is a subject of continuing debate, again resulting in inconsistent adjudications.

As a preliminary matter, then, any revisions to the H-1 category should provide a clear standard for determining whether a particular alien is a member of the professions and therefore qualified for H-1 classification. Specifically, the statutory language should be revised to include persons rendering services of a professional nature requiring specialized education, training, experience or any combination thereof sufficient to qualify the person as a professional in his field. It should also specify that while licensure in a profession is required where appropriate, prior experience in a profession is necessary only if that experience is requisite to qualification as a professional. While these elaborations on the statute have each been established in various INS precedents, they continue to be applied unpredictably; placing them directly into the statute should lead to a more consistent application.

Improvement in the statutory language for the H-1 category should provide the business community with the ability to predict whether it can succeed in bringing a particular alien to the

United States. It would not, however, provide a complete solution to the problems corporations have confronted with the H-1 category.

Many of the problems arising with intracompany transferees have beset corporations and other organizations in applying for and maintaining employees in H-1 status. Not only does the present statute require that the alien come to the United States temporarily, it also requires that he maintain a residence abroad that he has no intention of abandoning. This latter requirement supposedly guarantees the nonimmigrant intent of the alien, but is an expensive and burdensome means of doing so. As has been previously suggested, the issue of intent is better addressed directly by simply requiring that the alien have no present intention of remaining in the United States permanently. More to the point, however, the temporariness requirement with regard to the H-1 category serves as little purpose as it does with the regard to the L-1 category. The only real effect of the temporariness requirement is to require a company to predict and set an arbitrary termination date for the alien's stay in the country. The real facts may indicate, however, that no set termination date can be reliably determined, thus making the alien's stay indefinite and therefore unacceptable under the terms of the current Act. Even if the termination date can be set with some certainty, if the anticipated stay is longer than three to five years, it is unlikely under current standards that an H-1 classification could be maintained for that period of time.

If a fixed termination date is desirable for control purposes and to preserve the integrity of the immigrant-nonimmigrant dichotomy, this goal can be accomplished by simply establishing by statute a period of maximum validity of an initial admission, such as four years, with the option to renew if the circumstances warrant. Visas could be granted for the full period of the

anticipated stay, up to the four-year limit. The H-1 category could then be supplemented by the a classification such as described in the previous discussion of the L-1 category, permitting persons who otherwise qualify but who anticipate a stay of four to ten years to obtain nonimmigrant visas for their admission to the United States.

By establishing realistic limits for H-1 admissions, the removal of the temporariness concept from the H-1 category would not result in the removal of meaningful safeguards and controls, and would benefit the corporate employers of H-1 aliens by maintaining the mobility of those aliens even when permanent residence has been sought. In this respect, also, the previously proposed (M) category for intending immigrants would be an acceptable alternative that would satisfactorily meet the needs of corporations with an immediate need for the services of highly-skilled professionals.

Other Nonimmigrant Categories

While the L and H categories have the most impact on the businesses and organizations belonging to ACIP, I wish to comment briefly on some of the other nonimmigrant categories which our members have occasion to use in their normal business operations.

The B-1 category for visitors coming temporarily to the United States to transact business is restricted under current law in two ways: (1) the business visitor must receive his main compensation from a foreign-based employer, and (2) the principal benefit of the business visitor's activity in the United States must accrue to the foreign-based employer. The key element in any revision of this category should be to emphasize the temporariness of the business visitor's stay in the United States as the principal criterion for admission.

Several problems frequently arise that could be resolved by emphasis of the temporariness concept. For example, a need might arise for a foreign-based employer to send an employee to the United States on a temporary trip that will, however, require a period of stay longer than is usually considered acceptable for B-1 classification. The foreign-based company may sell goods to a U.S.-based company which in turn markets those goods here. It would be a legitimate purpose for a visit under the B-1 category to have an employee of the foreign-based company come to the United States to train the U,S. company's employees in the operation of the products to be marketed here. This training, however, might require the alien's presence in the United States for as much as a year or more. The employee would continue to be compensated from abroad, and the principal benefit of his activities would accrue to his foreign-based employer. Such a prolonged period of stay, however, often leads immigration officers to balk at granting admission in the B-1 category. The only alternative to applying in this category, however, would be for the foreign-based company to incur the unnecessary expense of establishing a United States office in order to transfer the employee here in L-1 status. A better solution is to specify in the Act that the proposed length of stay in B-1 status is not determinative of eligibility for admission in that status, as long as the need for entering the United States is shown to be temporary.

In a different situation, a foreign-based employee of a United States or multinational company may be needed in the United States to consult on a project being undertaken by the U.S. branch office. This consultation would be clearly temporary, lasting no more than a few days for each visit, and the employee would continue to be paid from abroad. Nevertheless, the principal benefit from his visit would accrue to the U.S.-based office. In

such a situation, in which the visit is clearly temporary, an admission in B-1 status should be appropriate; technically, however, it does not qualify under the present criteria for that category. We suggest that when the proposed visit is clearly temporary and the employee continues to be compensated from abroad, the location where the principal benefit of his visit accrues should not be considered in issuing a B-1 visa and admitting the alien to the United States. A rule more limited in scope than that proposed could be enacted applying only to employees of business entities qualifying under the L-1 category, where the principal benefit of the alien's visit accrues to the United States business entity but the international organization as a whole is the ultimate beneficiary of the visit.

The E category, divided into two parts, applies to aliens from countries with which the United States has signed treaties of commerce and navigation. The E-1 class applies to aliens from those countries with which we have treaties covering trade; the E-2 class applies to aliens from countries with which we have investor treaties. While these categories, as they currently exist, have been adequately defined in the case law and regulations, their benefits are restricted solely to aliens and businesses from treaty countries. No provision is made for aliens to invest in the United States and enter this country as nonimmigrants to oversee these investments unless the aliens are from a treaty county. The ability to enter the United States to oversee an investment is provided to non-treaty aliens only if they seek to immigrate to the United States. Some provision should be made in the Act to correct this paradox and provide for investors from non-treaty countries to come to the United States on a temporary basis to oversee their investments. Investment is an activity that can involve a significant benefit to the United States economy; such activity needs to be encouraged in our immigration laws and can be encouraged without the need to

increase potential immigration to this country. While legitimate reason may exist for restricting the liberal benefits of the E category to those countries with which the United States has reached commercial agreements, a properly-constituted nonimmigrant investor category could provide for this beneficial economic activity while preserving the special status accorded to the treaty countries.

The current practice of permitting aliens to receive training in the United States, either through approved programs under the J category, or on an individual basis under the H-3 category, should be continued. The J program has been beneficial to corporations seeking to provide young employees with experience in United States offices prior to assigning these employees abroad. While the H-3 category should be equally useful to companies and businesses without access to approved J programs, its usefulness has been limited by the manner in which the category is administered by the INS. Experience has shown that procedural delays in adjudicating H-3 petitions, together with frequent denials in cases of bona fide training programs, have severely restricted access to this category. For example, when an alien seeks to change his status in the United States to that of an H-3 trainee, it often happens that the alien has completed his training and returned to his home country before his case is finally adjudicated. Reasonable interpretation of the requirements of this classification and prompt adjudication of H-3 petitions would greatly enhance the usefulness of the H-3 category.

Conclusion

In closing I would like to emphasize several points that have been made throughout this presentation. Changes in the non-immigrant classification system will facilitate the movement of business personnel across national borders only if the substantive

changes in the law are accompanied by changes in administration of the law. Problems involving processing delays, inconsistent adjudications, and inexperienced and undertrained examiners have proven as frustrating to members of ACIP as have the substantive deficiencies in the present statute. Unless these problems are effectively addressed, the proposed revisions in the nonimmigrant classification system will have little practical import. The inefficiency of the INS must be corrected for the full benefits of any reform of the law to actually have an impact on the current waste of time and resources experienced by ACIP members in effecting routine personnel decisions.

On that note, I bring my remarks to a close. I will be pleased to answer any questions the member of the Subcommittee might have.

STATEMENT OF HAROLD J. AMMOND, DIRECTOR, COUNCIL OF ENGINEERS AND SCIENTISTS ORGANIZATION, HADDONFIELD, N.J.

Mr. AMMOND. Mr. Chairman and members of the Senate Judiciary Committee on Immigration, my name is Harold Ammond. It is a pleasure to address the committee in my position as a member of the executive board of the Council of Engineers and Scientists Organization called CESO.

CESO is a national coordinating council for 10 independent labor organizations representing engineering, scientific and technical employees at such companies as Boeing, Lockheed, McDonnell Douglas, the Aerospace Corp., Leeds and Northrup, RCA, and Westinghouse.

I trust you will find my comments pertinent as CESO's involvement in the issue of criteria for granting H-1 and H-2 visas dates back to early 1978. Then, as now, industry was attempting to import large numbers of scientists, engineers and technical employees on temporary visas to fill positions that they claim could not be filled with domestic engineers.

Our position at that time was that for virtually every engineering position, an American engineer could be found. Our position remains unchanged. We feel that the difficulty industry has in filling requirements lies not so much with the number of available applicants as to the methods by which industry recruits and the level at which they compensate.

Recruiting scientific and engineering personnel is quite different from most other occupations. The professional labor market is truly a national one. For those skills are at times so specialized that no qualified applicant may exist within a local labor market.

Unless an employer seeks nationwide to fill a position, it cannot, with absolute assurance, say that no qualified applicant exists.

The Department of Labor recognized this problem and in May 1979 joined CESO in the creation of the CESO Registry which was called CESOR. CESOR solicited resumes of engineers on a national level through trade magazines, local newspapers and towns having large numbers of scientific and engineering personnel, and from the member organizations of CESO.

When a company sought a temporary work permit from the DOL, that agency advised CESOR, which then forwarded resumes of available engineers on file with CESOR who claimed the skill the company alleged it could not find in the United States.

The DOL gave the resumes to the company, and then the company was required to explain why the American engineer who had submitted his or her resume was not satisfactory.

CESOR was in place from May 1979 through September 1980, at which time responsibility for skill-matching was transferred to a nationwide job bank set up by the Department of Labor in the New York State Employment Department.

It is CESO's feeling that CESOR could have been more successful, had industry extended its cooperation. Even as some companies laid off engineers for lack of work, they refused to make engineers aware of CESOR to aid in finding work elsewhere.

Indeed, the Aerospace Industry Association, an association of major aerospace companies, refused to aid in the process even though the member companies would have been the prime users of the program.

What prompts industry to drag its collective feet on the procedure which would benefit the domestic scientist, engineer and technical employee in finding employment? We feel it is the second point I mentioned earlier, compensation.

Quite simply, Mr. Chairman, aliens will work for less. The chance to work in the United States, even at a salary considerably less than the prevailing wage for an American engineer is quite attractive.

As an example, I draw your attention to a column called "Your Profession" in the November 12, 1981 issue of "Electronic Design," an industry trade magazine which detailed the marketing efforts of a California employment agency for Filipino technicians and engineers.

The agency advertised as one of the qualifications of Filipino technical workers the sizable reduction in their wages. The common practice of employers to limit the number of qualified applicants is to make the salary offer for a position requiring a certain amount of experience or education so low that only an alien would consider it.

Compensation is not limited to salary offers, either. Certainly we are all aware of what high interest rates on home mortgages has done to the typical American ability to sell a home and move elsewhere. Companies have failed to adequately address the true cost of relocation in making offers to qualified applicants. The foreign worker is more willing to make the sacrifice and absorb the uncompensated hidden relocation expenses.

The problem, in our view, is one of underutilization and allocation. Properly solved, it could provide better financial reward and career development for engineers and scientists. The solution would also benefit those technically oriented people who cannot find employment at present and would allow them to continue their growth and possibly lead to even a more rewarding career in engineering or science.

Admittedly, the domestic nationwide recruitment and placement effort may be inconvenient to corporate management, when weighed against the overall suffering experienced by so many engineers during the lean years when the cyclical nature of technology companies reached its low ebb. The corporate costs and efforts today is insignificant. The recruitment effort may also require some individual training for specialized jobs in cooperation with educational institutions to train more technical support personnel.

If so, such training would be beneficial to both the employer and the industry over the long haul. Productivity is now the watch word of the Nation, but productivity is not limited to the efficient use of machines. People, too, can be more efficiently utilized.

The idea that when a resource, even qualified personnel, becomes scarce, we must immediately import more is now obsolete. Better utilization, cross-training and retraining are all appropriate responses for any shortage that may exist in qualified personnel.

CESO feels that the evolution of the current practices of certifying temporary foreign workers is not warranted at this time. Any short-term local shortage of qualified scientists, engineers, and technical employees can be adequately handled through more thorough, nationwide recruiting efforts, equitable compensation to attract qualified applicants, and training for existing professionals.

CESO, as it did in 1979, is willing to work with Government agencies and industry——

Senator SIMPSON. May I ask you to accelerate?

Mr. AMMOND. Fine.

Having said all the above in this hearing, CESO would not seriously object to bringing into the country truly extraordinary intellectual giants envisioned by H-1 visas. CESO believes that in addressing the problem, which has given rise to these hearings, Congress must make and prevent the following:

The granting of H-1 status to people not yet in the United States who do not deserve it; and two, the American companies not be allowed to have current employees holding H-2's converted to H-1.

Thank you.

Senator SIMPSON. Thank you very much.

[Additional material submitted by Mr. Ammond follows:]

COUNCIL OF ENGINEERS AND SCIENTISTS ORGANIZATIONS
representing engineers, scientists and technical employees
information - (714) 896-6603

Aerospace Industry Salary Curves

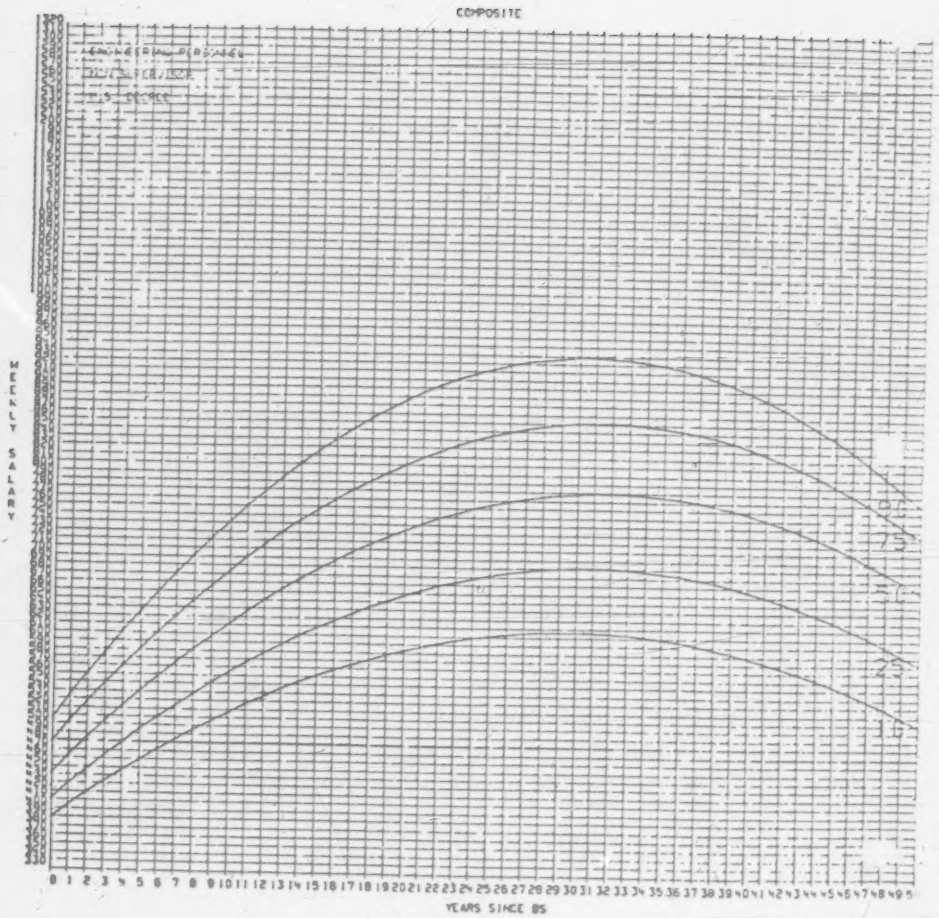
The attached charts were obtained from a salary survey conducted by the Hughes Aircraft Company of aerospace companies. The participating companies included:

Aerospace Corporation
Boeing
Douglas Aircraft
General Dynamics - Convair
General Dynamics - Fort Worth
General Dynamics - Pomona
Grumman
Hughes Aircraft
Lockheed - California
Martin Marietta
McDonnell Aircraft
Rockwell Aircraft - Los Angeles
TRW
Vought

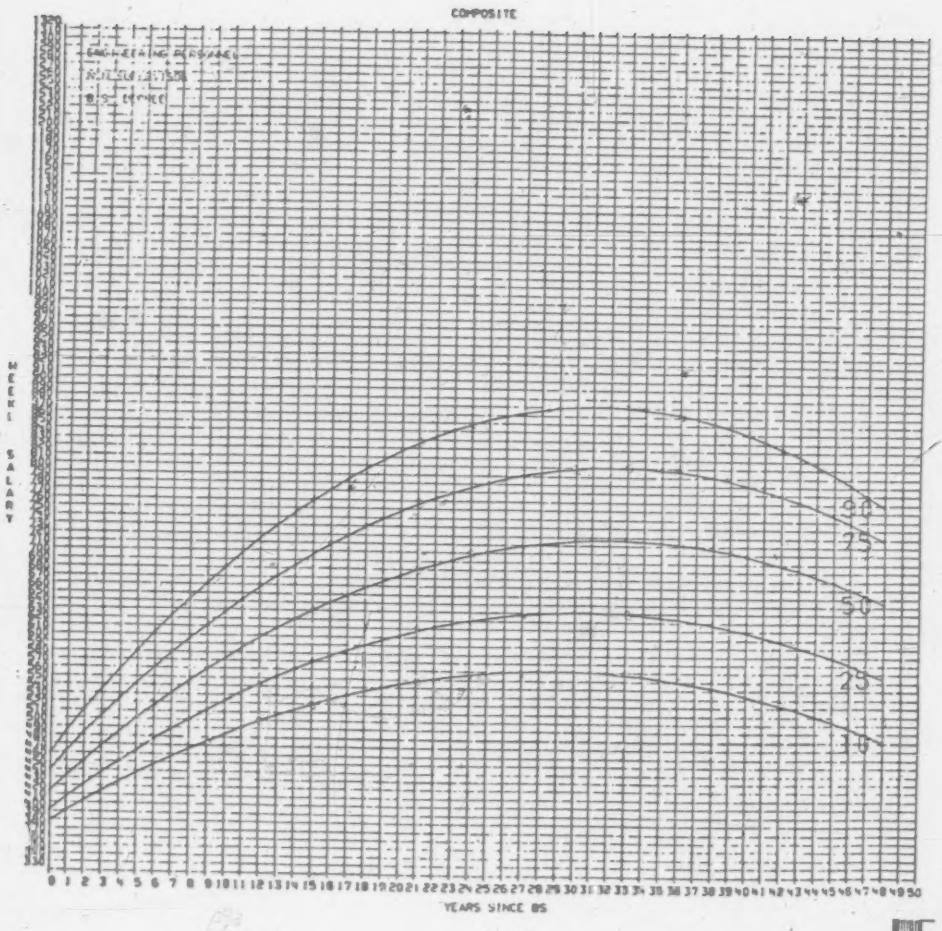
The salary survey, conducted in 1981, is used by companies in comparing the salaries of their non supervisory engineering personnel against those of competitors. The three attached charts plot weekly salary (excluding cost of benefits) against years since receipt of Bachelor's degree. The family of curves on each chart represent different percentiles within the salary distribution at a particular year. For example, the 10% salary curve is for engineers earning in the lower 10% of a particular peer group. The 90% is for the lower 90% or, equivalently, the upper 10%.

Separate charts are provided for engineers having obtained as a highest degree either a Bachelors, Masters, or Doctorate.

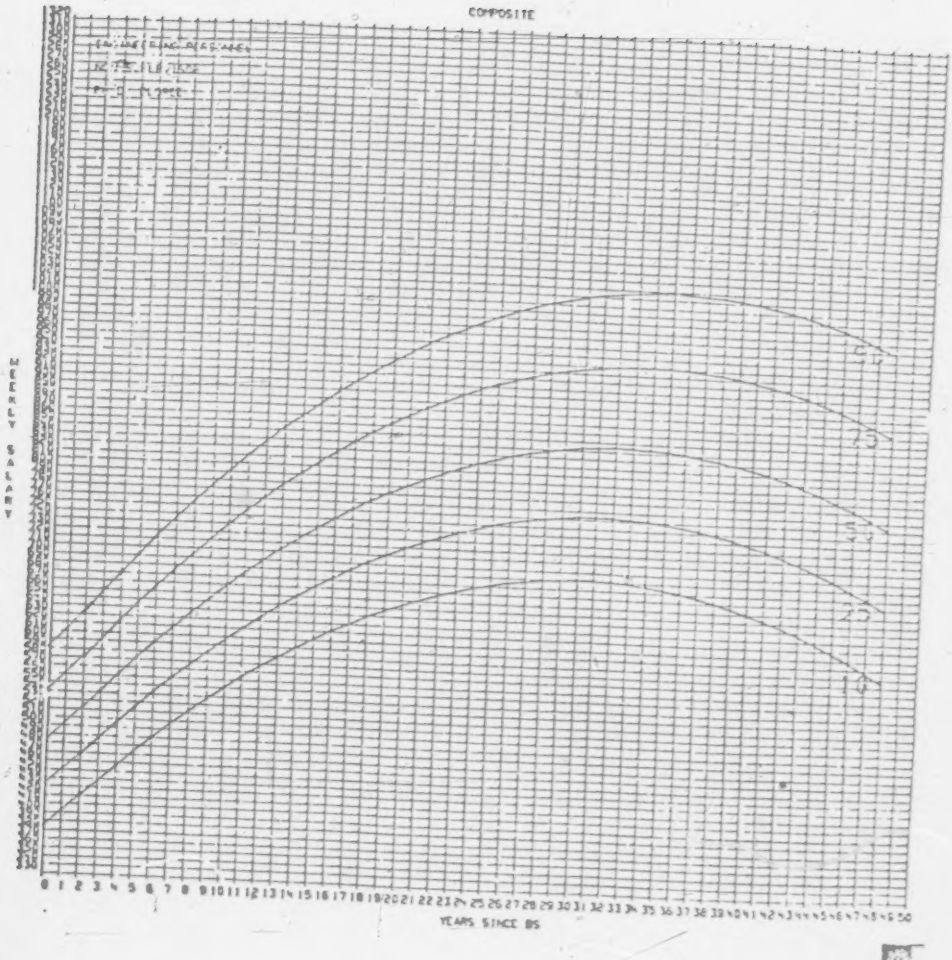
ENGINEERING PERSONNEL
NON-SUPERVISOR
BS DEGREE



ENGINEERING PERSONNEL
NON-SUPERVISOR
MS DEGREE



ENGINEERING PERSONNEL
NON-SUPERVISOR
PhD DEGREE



Senator SIMPSON. Mr. Feerst, please, Irwin Feerst:

STATEMENT OF IRWIN FEERST, PRESIDENT, COMMITTEE OF CONCERNED ELECTRICAL ENGINEERS, MASSAPEQUA PARK, N.Y.

Mr. FEERST. Thank you. It's a pleasure to be here.

I am an electronics engineer. My three college degrees are in EE, and I have been addressing this problem of foreign engineers for about 7 years now.

I think that we need to identify the harm to the engineering profession, and it has been harmed by three identifiable people: Mr. Scully, who was just here; Ms. Meissner, who likes to ping-pong the blame between her and Mr. Scully; and Mr. Aaron Bodin of the U.S. Department of Labor.

But before I amplify on that, let me indicate that my thrust will be the adjustment of status on the part of foreign engineering students who come here. Some figures are upsetting. According to the New York Times, December 7, 1981—Pearl Harbor Day—there are fully 312,000 foreign students here.

I note that the largest single group, more than 80,000, are studying engineering.

Now I think it's reasonable to give a cost to this thing. I think that if we compute the total cost per year of the education and subtract from them the tuition and fees that they pay, the net cost to the American taxpayer is somewhat over $3,000 per student per year. $3,000 per student per year times 312,000 students is about $1 billion a year that the American taxpayer has to pay to educate foreign students.

I note, for example, that Senator Grassley's home State of Iowa, particularly the University of Iowa, has turned out repeatedly hordes of alien engineering students at the graduate level, and I have a paper that will bear that out. I don't understand that, and I wonder, for example, how the American engineers at Rockwell-Collins in Cedar Rapids will take to this thing. I am speaking at Rockwell-Collins on February 11 of next year.

There is a second cost we have to look at, the cost to this Nation's poor. College training has typically been the way the poorer classes elevate themselves to the middle class. It happened with me. I was born in what was then a slum. God knows what it's turned into now.

But what has happened is that the foreign students who come here are not the poor classes. They are the upper classes from overseas. They come here and they immediately have, at least in the engineering field, no problem in getting their student visas exchanged for a resident visa; thus they become an instant middle class in this Nation.

But the result is the presence of this middle class inhibits the upward mobility of our poor classes, many of whom happen to have dark skin.

I think we have to recognize that fact, that it is indeed a social problem as well.

The third cost which I would like to mention is the cost that my colleague, Mr. Ammond, had spoken of, the lower wages that these people get. These foreign students in engineering—and my state-

ment that I will give you has some of these—work for, on an average, one-third less than the American engineer works for.

Now this, of course, drags everything down. There's been a very, very recent development in this. At GTE, Sylvania, Needham Heights, Mass.—I believe Mr. Kennedy is from that State—last Friday, December 4, GTE laid off 100 American engineers, but did not touch any of the 70 British engineers they had hired in the past 18 months.

I wonder how our Irish people in Boston are going to take to that when they find it out.

To sum up, we think that no foreign student should be allowed to remain here. He or she should be made to go back and wait his or her turn in the queue as every other person from that nation.

Some other small points: Mr. Scully would have us think that things are working well overseas. Not true. Before a Department of State can issue a student visa, they must ascertain that there are jobs in the native land for the skills that that student will acquire as a result of his or her training here. And that's not done, and that's not the case.

I'll terminate this now and remain open for any questions you may have.

[The articles submitted by Mr. Feerst follow:]

Are Aliens in Engineering a Threat to Your Job?

by Irwin Feerst

(CHANGE OF STATUS)

Presented to:

Senate Judiciary Subcommittee on Immigration

11 December, 1981

Committee of Concerned E.E.s
P. O. Box 19
Massapequa Park, N.Y. 11762
(516) 798-9517

THE COSTS OF FOREIGN STUDENTS STUDYING IN THE UNITED STATES

(WITH EMPHASIS ON ENGINEERING)

A. THE COST TO THE AMERICAN TAXPAYER

Assume that each college student costs the American taxpayer $3,000 per year. This is the total cost of his/her education less the tuition cost. Thus, the total cost to the American taxpayers for the 312,000 foreign students studying in the United States is more that $ 1 BILLION PER YEAR!!!! In the case of engineering, the per student cost is even more. This is because of the expensive capital equipment required for engineering education.

B. THE COST TO AMERICA'S POOR

Only the upper classes of foreign nationals can afford to come to the United States to study. Many (perhaps most) remain here - no precise figures are available because of the ineptness and intransigence

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Irwin Feerst

of the Department of State, the Department of Labor and the Immigration and Naturalization Service. Thus, those who do remain here become an instant middle class.

But the American process has traditionally been one in which our lower classes percolate upwards to the middle class. But the presence of this instantly-created middle class (the foreign graduates of American colleges) inhibits the upwards social mobility of our lower classes - many of whom happen to have dark skin.

C. THE COST TO LABOR

Those engineering students who do change their status and remain in this country to work do so at a lower wage!! We have documented several such examples. Thus, the foreign engineering graduates of American colleges working in the United States pull down the salaries of American engineers!!!!

There is an even more insidious result. We have documented cases in which directly-imported foreign engineers are kept on the job even after their American counterparts have been laid off. The most recent example occurred on December 4, 1981 at GTE-Sylvania, Needham Heights, Mass. GTE laid off about 100 engineers -- all were Americans -- but retained all of the approximately 70 British engineers they had hired in the past 18 months. (I believe that the State of Massachusetts is the home state of a member of this Subcommittee.)

In another case, General Electric (Lynchburg, Virginia) retained all 15 British engineers they had hired (with less than 10 months' service), but laid off many American engineers. This occurred in March, 1981.

IN ALL CASES, FOREIGN ENGINEERS HAVE BEEN KEPT ON THE JOB AND AMERICAN ENGINEERS WERE FIRED BECAUSE FOREIGN ENGINEERS WORK FOR LESS.

D. RECOMMENDATION

THE COMMITTEE OF CONCERNED ELECTRICAL ENGINEERS RECOMMENDS THAT FOREIGN STUDENTS BE FORCED TO RETURN TO THEIR NATIVE COUNTRY AFTER COMPLETING THEIR EDUCATION. NO EXCEPTIONS SHOULD BE GRANTED.

Committee of Concerned E.E.s
P. O. Box 19
Massapequa Park, N.Y. 11762
(516) 798-9517

Irwin Feerst

THE NEW YORK TIMES, MONDAY, DECEMBER 7, 1981. B14

Iran Leads in Students Attending U.S. Schools

WASHINGTON, Dec. 6 (AP) — Iran has more students attending American colleges and universities than does any other foreign country, despite the breakdown in relations between Washington and Teheran, according to a study released today by the Institute of International Education.

About 47,550 Iranian students attended American colleges in 1980-81, down from 51,300 the year before, the institute's annual census found. The decline came in the wake of Government efforts to deport Iranians who were violating their visas.

Overall, nearly one-third of the record 312,000 foreign students attending American colleges and universities came from nations in the Organization of Petroleum Exporting Countries, the study said.

Overall, enrollment of foreigners on American campuses grew 9 percent, from 286,000 in 1979-80.

80,470 (= 25.8%) ARE STUDYING ENGINEERING !!!

(BY FAR THE LARGEST CATEGORY).

Source: Mr. E. Battle, Institute of International Education, 212/883-8200

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(516) 798-9517

Irwin Feerst

ENGINEERING DEGREES GRANTED TO FOREIGN STUDENTS

(ATTENDING AMERICAN UNIVERSITIES)

	1979		1980		1981	
	NUMBER	PCT.	NUMBER	PCT.	NUMBER	PCT.
B.S.	3788	7.20%	4855	8.35%	5622	8.92%
M.S.	4066	25.4 %	4509	26.6 %	4677	26.1 %
PH. D.	929	33.0 %	982	35.7 %	1054	37.1 %
TOTAL FOREIGN	8783		10346		11353	

Source: Engineering Manpower Commission, Mr. P. Sheridan, 212/644-7850

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Irwin Feerst

Electronic Engineering Times · Monday, May 25, 1981

Commentary

(Continued from Page 87)

or another but which essentially is a given quantity.

Yet each enterprise's internal bureaucracy gets stiff and old; and if young and vigorous enterprises are actively suppressed, there is no alternative for the beleaguered customers to the creaking products and tools of today.

As you must know, several independent studies have shown that—as we always knew—97 percent of all employment growth is in new enterprises. That's 30-to-one. We hear arguments for or against the Marxist idea of worker ownership, but none about the eventual necessary replacement of antiquated ideas and machines.

One doesn't get rid of capital by calling it something else, and it's the life's blood of industrial renewal. The public must come to realize that the rich-bird, the capitalist pig, is absolutely indispensable to renewal, and that, when we pick his pocket to feed the poor, he can't spend it to build jobs for their many children in industries that don't exist yet. And no one else can, either, because there is no one else—unless you believe the government has a good answer for marketable ideas (maybe the SBA?). Might as well eat the seed corn.

Mr. Reagan trusts the American People to invest their tax cuts in progress. Really! Don't let the SEC find out! It's literally illegal! To protect the little guy from risks, the SEC has essentially prohibited him from investing in new business. But you can still invest in Chrysler.

Philip C. Harvey
President
Aviation Electronics Corp.
Nashua, NH

Reference is made to the letter written by the president of Precision Controls, Inc. of Eugene, Oregon in which the company's hiring of an alien engineer with an MS degree and "several years' experience in real-time process control" was vehemently defended. Curiously, the letter (*EE Times*, 4/27/81) failed to mention the salary offered to the unfortunate alien—all of $17,700/year. But the long-winded description of the process whereby the sweatshop wage was legalized is interesting and illuminates some obscure points.

• The fact that the alien engineer was recruited from the campus of the University of Oregon makes it clear why we must insist that the universities limit the number of foreign students attending American engineering schools. The now-employed alien managed to subvert the intent of his student visa (that he return home after graduation!) by contriving to find a job in this country after graduation. Indeed, many alien engineering students come here to study, precisely because they know that they can find a job after graduation (and the penalty in this country) by the simple expedient of working for a substandard wage.

• The complicity of the U.S. Department of Labor in undermining the salary structure of the American engineering profession is clear. That the USDOL's office in Eugene, Oregon, was willing to accept, as accurate, Precision Controls' salary figure indicates the ineffectiveness (at the very least) of Labor's efforts to protect the American engineer. Yet IEEE's salary survey is updated annually and has been made available to USDOL for many years. Why did Labor choose to ignore these salary figures and rely, instead, on an obscure set of data supplied by the very employer seeking to certify an alien?

• Contrary to the assertion of Precision Controls, there is no shortage of engineers in this country. There is, however, a shortage of American engineers with an MS and "several years' experience in real-time process control" who are willing to work for $17,700/year.

• A large part of the blame for this unhealthy situation must lie with the engineering societies, which have never served as professional defenders of their members. The hierarchies of the engineering societies are composed of members of the two groups that benefit most by alien engineers—the college professors (whose classrooms are kept full by the presence of aliens) and the corporate executives (whose engineering costs are kept down by hiring alien engineers at substandard wages).

To sum up: Precision Controls' hiring of an alien engineer with an MS and "several years' experience in real-time process control" for $17,700/year is, simply put, a case of exploitation. In this act, the firm has been aided by the ineffectiveness of the U.S. Department of Labor and the indifference of the engineering societies. Yet, Precision Controls would have us believe that the hiring of the alien engineer was "a bit of humanity towards the prospective immigrant." After wiping away my tears, I would ask, "If you are so humane, why didn't you offer the alien engineer a salary of $25,000/year?"

Irwin Feerst
Committee of Concerned EEs
Massapequa Park, NY

ELECTRONIC ENG. TIMES
4/4/81, A-28

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OMNI
OMNI Personnel Services Inc.

Suite 279
4320 Stevens Creek
San Jose, California

Phone (408) 249-3544
Telex 171-647
TWX 910-338-7067

2 September 1981

Dear Sir:

We would like to introduce OMNI Personnel Services, Inc., which represents the Philippine contract workers in Canada, Great Britain, Italy, Saudi Arabia and other Mid-Eastern countries.

The Philippine labor market has been very attractive to companies in foreign countries worldwide because Filipinos are known not only for their hard work and technical abilities, but also for their command of the English language. To top it all, hiring of Filipino technical workers is more advantageous because it means an increase in profit for your company due to the sizable reduction in their wages.

We would like to explore with you the possibility of securing H-1 visas issued by the U. S. Immigration Services for contract workers in the United States. We would also like to discuss with you placement in foreign countries in which your company might have manpower requirements.

If you think OMNI can solve your manpower requirements, please do not hesitate to write or call us, and we would be more than glad to discuss the matter in further detail, personally.

With anticipation that this letter will merit your valued interest, I remain,

Sincerely,

RODRIGO P. ALAURA
Director - Contract Workers

RPA/ksb

Senator SIMPSON. We'll have some questions. You look like you'd be ready for a few, and spiritedly respond. [Laughter.]

So we'll save those.

You didn't mention Wyoming. What had happened there?

Mr. FEERST. I have no data on that. Oh, I do, but they are not one of the principal offending colleges. [Laughter.]

Senator SIMPSON. Well, we only have one in Wyoming. One 4-year institution, heavily funded.

Senator GRASSLEY. Let me suggest to the last speaker that when I was in the State legislature in the early 1970's, I raised the question with our university president, not just about engineering students, but about any foreign student, particularly foreign graduate students, and why they weren't paying any more tuition than just an out-of-State student. In fact, in some respects, maybe there was some way they could just pay in-State tuition.

Mr. FEERST. That's true.

Senator GRASSLEY. I suggested that the very least they ought to do was pay the full cost of the education.

And of course the response I got from the president of the university was that you don't know how important it is to have foreign students at the university to serve as a resource, through friendship, et cetera, for all of the American students or Iowa students who are at these universities; that is part of the process of liberal education within America.

I suggested that that liberal education could probably come just as well through their paying the full cost, as well as the taxpayers of Iowa subsidizing the cost.

Mr. FEERST. Senator, you're correct, but the great importance of having foreign students, now that the World War II baby boom is gone, is that it keeps the professors in work. They might even have to go out into the real world. That's a terrible thing. They have to have jobs, and jobs require students. A billion dollars a year.

Senator SIMPSON. Well, we'll have some questions.

I might just start down the row here. Mr. Cagney, I was interested in Senator Grassley's remark. While I was a student at the university, we had a great number of Afghani students because of the interchange of the learning of the process of wool growing and the high altitude of the West was very similar to Afghanistan. A very large number. Extraordinary. And from India. And that was a great part of the experience for the Wyoming student who grew up in Wyoming, remained in Wyoming, to have that interchange, that cross-pollenization.

Indeed, one of the pharmacists down at Peoples Drug in Georgetown is from India, and he went to the University of Wyoming soon after I did. Very interesting things. I think that's a very important thing. But enough of that. I could romance along.

Mr. Cagney, you mentioned the recommendation of having reputable companies authorized to handle their own L-1 programs such as is now authorized for the exchange visitor or for J-1 programs. How do you respond to the situation that many companies, even very large and reputable ones, discharge their American engineers in order to hire at a lower price foreign engineers?

Mr. CAGNEY. Well, I don't think that would be it, really. Maybe we're talking about different groups of people. On the L-1 pro-

gram, you are bringing talented managerial executive, specialized knowledge staff who are identified with the company. They are not to displace, let me say, American engineers, and bringing in foreign nationals, such as major corporations do, is costly. In my experience—and again I say maybe we are talking about different groups of people than this gentleman on my left, but you pay at least the American wages, and there are other costs.

To move people internationally is expensive, and what you need is the talent, international experience, international exposure. That is why companies are moving these selected foreign nationals over here. They are not talking about great numbers, at least from my point of view. They are not enormous numbers, and they are not interfering with our domestic labor market.

In my experience, the companies that we are dealing with I would have to disclaim the statement that companies were bringing people in at lower wages, and because they are not availing themselves of the domestic labor market. We only wish they could, really.

Senator SIMPSON. You also mentioned the possibility of granting a long-term visa, for up to 10 years. Would not that result in practice with sufficient ties and equities being built up for almost every one of those visa recipients that they would then be able to prove perhaps a hardship and be able to remain as a permanent resident if they wished? Would that not occur?

Mr. CAGNEY. Well, there's no doubt that would occur, sir. I'm sure that would be brought about with the passage of time, but let me put it in another context: American companies send American expatriates abroad for a good number of years. The company I worked for had people in England for 10 to 15 years; in Germany for the same length of time. They were felt to be needed at that time in development of the organization.

So other foreign countries do allow that. They don't bring up the question of permanent residence requirement in the United Kingdom or in Germany. I think we artificially create a problem by saying that anybody coming in here on an L-1 basis or an H-1 or whatever it is, must be going for a permanent resident status. They are here to do a job.

They may be needed at a U.S. headquarters because of their talent and ability. Maybe they function well in Germany, but bringing the family over here is a risk to the company and to the individual. It's almost like a trial marriage, as it were.

There may be a number of reasons in one case where they would not want to stay longer than a 2-, 3-, or 4-year period of time which, for instance, is the experience on the L-1 visas. But then again there may very well be a number of cases—and I don't think they'd be all that great—where with the passage of time on this long-term visa, that with the marriage taking place between the headquarters and the individual and his or her family, they would say, "Yes, we at this stage would like to convert over to permanent residency."

But I don't envisage that as a real thrust of the request for the long-term visa program.

Senator SIMPSON. If one were to expand the length of stay permitted under one of the L or the H categories, and also made it

easier to get those visas, would you then feel that it might be appropriate not to permit adjustment of status?

Mr. CAGNEY. Well, I think I can only say that as the State Department and others said, that there may always be pressures for an adjustment of status. I think that's an inadequate answer, but I believe I have to be honest in saying that.

Senator SIMPSON. You have had obviously a great deal of experience with foreign visas. Do other countries grant nonimmigrant business visas much more easily than we do, from your observation?

Mr. CAGNEY. Yes. They do.

Senator SIMPSON. How do foreigners view our procedures? As excessively complex, or tough, or too easy to enter, or to adjust, as you perceive it, from your background?

Mr. CAGNEY. They just do not understand our restrictions. They typically ask, "Why are you doing this?" They feel it doesn't make sense at all. For instance, one of the real problems behind all of these matters is, for instance, on the permanent resident visa, which in the process that is required now, we experience delays of 12, 15, 18 months, 24 months, and it's ridiculous, because, one, it's an artificial barrier that's set up, they must get that standing and it takes too long. Companies just cannot wait that long in order to get the needed talent to do this particular job.

I'm not talking about interfering with our domestic labor market. These are multinational companies that have to function on an international basis, and there's a reciprocity in the flow of people. There's mobility overseas and mobility toward this end of selected, specialized people. They are expensive. They are not cheap, in either direction.

Senator SIMPSON. Thank you very much.

Mr. Fragomen, at present exclusion categories for the nonimmigrant and for the immigrant are the same. You heard those other remarks prior, of the prior panel, and I think that may encourage adjustment of status.

Do you think the exclusion category for nonimmigrants should be any simpler or less restrictive than for immigrants?

Mr. FRAGOMEN. Well, I think as a general principle that there should not be as rigid an application of the grounds of exclusion to persons who are coming to the United States for bona fide temporary purposes.

For instance, if you have someone who's a world-renowned authority, like a Nobel Prize winner in physics and he's coming here to give lectures, and he happens to be a member of the Communist party, I don't think that we should be so hung up over the fact that he's a member of the Communist party. But if he wanted to immigrate, then I think that would be a more serious concern.

Mr. FEERST. Senator, may I——

Senator SIMPSON. If you'll just hold, then we'll develop it within the time. I just want to direct my questions to each of you and then we'll come back. Make a note of what you wanted to ask and we'll get to it at the appropriate moment.

Mr. Fragomen, do you think the consul and the INS should approve L visas as they do now for the E and B visas?

Mr. FRAGOMEN. Well, my own opinion is that putting the burden on a consular official of making determinations of a sophisticated nature as to corporate interrelationships, whether the companies are properly affiliated or not, et cetera, would be a rather great burden to put upon them.

What I would much rather see happen is I'd rather see a program established so that companies can file their 10-K statements or other official documentation showing what their international network is, and what the dimensions of that international network are, and then all the consular officer would have to decide is whether the person is in fact a managerial, executive or specialized knowledge employee, and whether he's worked with the company abroad for a year or more.

But I think that's a more efficacious way to handle the procedure. Certainly the present system is an abomination, making individual adjudications over and over again for hundreds of identical cases.

If the Chase Manhattan Bank files 200 routine L petitions to transfer people in and transfer them out, and in their case a very, very small percentage of these persons would ever file even for an extension now that you can be admitted for 3 years, let alone for permanent residence—but the point is if they're going to file 200 of these in the New York Immigration Service, that means an immigration officer has to sit down and make 200 separate adjudications. And when you multiply that times all the large multinational corporations that repeatedly file L petitions, the number of man-hours consumed in the process so overburdens the system that it results in tremendous backlogs in adjudications.

So the present system just doesn't make any sense.

Senator SIMPSON. Now you're referring to the L visa there?

Mr. FRAGOMEN. The L visa, right.

Senator SIMPSON. That was established in 1970. It's rather recent in some of our dialog.

Mr. FRAGOMEN. That's correct. And I had the pleasure of being the staff counsel on the House subcommittee at that time.

Senator SIMPSON. I recall that.

Mr. FRAGOMEN. And the purpose behind that was to be ameliatory and I think a combination of unconscionable delays in processing and maybe a little bit too rigid interpretation as to words like "affiliation" have really undermined it considerably.

Senator SIMPSON. If only many like you could come back and see what they wrought. [Laughter.]

In whatever year, as members, very capable members of staff, it would be interesting, wouldn't it?

Mr. FRAGOMEN. Well, it's interesting to me to see the various things that I worked on at that time, and what's happened subsequently.

Senator SIMPSON. I'm sure it is. Interesting for us, too.

But, anyway, this business of transferees between simply different units of international companies, then you feel that that's not effective at all, the way it's being administered?

Mr. FRAGOMEN. No, because the delays are just too great and the documentation is too extensive, and basically the Immigration Service is constantly concerned about their budgetary and man-

power requirements, and this present structure just overburdens them.

Senator SIMPSON. And do you have any specific brief commentary as to how best that L visa situation might be resolved?

Mr. FRAGOMEN. Well, I think that for major corporations that are constant users of L visas, that the way to handle it would be by permitting those companies to file for a formal program designation, which would approve their network. For instance, in the case of the Union Carbide Corp., it would establish which of their affiliates and subsidiaries are qualified to use L visas, and then the company would issue a document directly to the alien who would bring it in to the consul, and he'd apply for the L visa. All the consul would have to determine was that he was a sufficiently high level person, one of the company's key personnel; and second, that he had in fact worked for the company a year or more abroad.

I think that would be a very efficient way of doing it. There would be a lot of time spent in the beginning to establish the network, so to speak, to approve the program for that company, but once it was done, it would flow very quickly.

Senator SIMPSON. That's very interesting and well worth considering. Thank you.

Mr. Ammond, what do you think might be done legislatively to avoid the situation that you mentioned in which companies attempt to discourage American engineers from applying for engineering jobs by offering such low salaries that only the foreign engineers would consider them?

Mr. AMMOND. Our experience, Senator, indicates that the system works in the following fashion:

The visa is sought and the Department of Labor then becomes involved, and they attempt to determine if there truly is a shortage in that particular area.

Our work with the Department of Labor indicated that you cannot do it in the State of New York or in Maryland or in New Jersey; that you must search the country nationwide for the skill. It is very conceivable that there can be a labor shortage of skilled engineers and scientists on Long Island and have a surplus developing in San Diego, Calif.

It is our feeling, as the council, that it is absolutely required that that company seek to first employ American engineers, and if it means going to San Diego, the other side of the Nation, it's got to be done.

So I think our problem primarily is with the Department of Labor in getting them to properly search the country for the personnel that's required.

Senator SIMPSON. Are there changes in the adjustment of status of process that you think might be appropriate? You mentioned that H-1 status should not be granted to people not yet in the United States who do not deserve it.

Should we eliminate adjustment of status as an alternative?

Mr. AMMOND. Our community, the professional technical community in the United States, is definitely cyclical. We've got our history showing back in 1968, 1969, and 1970, where engineering and technical personnel were being laid off by the thousands in this country. In fact, we placed a sign in Seattle that said, "We're the

last engineer leaving Seattle. Please turn off the lights." That's how serious it was.

Today we find ourselves in a shortage. We feel the shortage can be balanced by proper utilization of a nationwide system to search out individuals. We do not think that temporary scientific engineering personnel should be brought into the country. If they are, they should not be made permanent, because unfortunately we will once again cycle and find ourselves in a surplus situation with American engineers.

It's just the nature of the business.

Senator SIMPSON. Under what category of nonimmigrant do most of the engineers fall? Those who are in competition with the electrical engineers in your organization, what category?

Mr. AMMOND. Right now we are finding computer scientists, electrical, mechanical engineers being brought into the country. H-2's right now, Senator. I'm sorry.

Senator SIMPSON. That's what I was wondering, the category: H-2's?

Mr. AMMOND. Yes, sir.

Senator SIMPSON. You mentioned that American companies allow the holders of H-2 in their employ to convert to H-1 status. Can you tell us whether or not that occurs frequently?

Mr. AMMOND. From our experience in the last couple of years, yes, definitely.

Senator SIMPSON. Quite frequently?

Mr. AMMOND. Quite frequently.

Senator SIMPSON. Do you have any numbers?

Mr. AMMOND. No, Senator, I'm sorry, I don't have specific numbers.

Senator SIMPSON. Maybe if you could check that and furnish that to us, that would be helpful.

Mr. AMMOND. Sure.

Senator SIMPSON. Thank you very much.

Mr. Feerst, you mentioned the number of foreign degrees being given in the engineering field. I'm sure you must have some feelings about what might be done there. Should we restrict the number of foreign students or take other action to assure that upon the completion of their degree, that they return to their native country? Is that what we should be considering? Should we allow them to continue to study in the United States, and then upon graduation should they be sent back? What are your views there?

Mr. FEERST. I would say two things: One, they should definitely be sent back and made to wait their turn in the queue as their countrymen do who may not be as wealthy as they are.

Your Indian pharmacist friend is, I think, a good example of that. Back East, there's a glut of pharmacists and I would think there would be a natural resentment of this person who came as a student under category F, I think, and then changed his mind and decided to remain in Georgetown.

Moreover, it would be well from the taxpayers' point of view to insist that foreign students pay the full total cost, which is more than the mere tuition that's charged, including the amount, of course, that the taxpayers of that State pay.

I don't think there's anything wrong with that. I think I accept your comments that it's an interesting experience for the undergraduate. I myself put in many, many long years as a college professor. It's a fascinating time for everyone, but the thought that they are muscling in on line before their less affluent countrymen is upsetting, and it should upset the American sense of fair play.

Senator SIMPSON. What do you think should be done legislatively, then, in order to avoid the situation that you mention, in which companies discharge American engineers, but retain foreign engineers?

Mr. FEERST. Well, that's fairly easy to do, but the easiest way to fix that is to insist that the Department of Labor follows its own rules. That is, they are not to allow, it says in the print, they are not supposed to allow any foreign engineer to be hired unless the employer offers the going wage.

We have submitted salary data for years to Mr. Aaron Bodin of U.S. DOL, and Mr. Bodin consistently says this data doesn't count.

The result is there have been ads that have appeared for engineers to work for about half to two-thirds of what their American counterparts get hired on for. The result is, as in the case of GTE, Xerox, Raytheon, TI, when the layoffs come—and they absolutely do come and they are coming now, right now in this crunch—the foreign people are left.

There is a third thing we must do also. The foreign engineers cannot easily be hired to work on defense work, for obvious reasons. The result is they tend to go off into areas in nuclear energy, and there is a school of thought that holds that these terrible problems at the nuclear powerplants are due to the attitude that many of the foreign engineers have, which is get the job done and to heck with how good it is.

In the defense business, I'm pleased to say that does not happen. Engineers work very, very hard to make sure the job gets done and gets done correctly. It does not happen so much in other fields.

Senator SIMPSON. That's an interesting theory, but you happened to touch upon an area which I chair also, and that is the Subcommittee on Nuclear Regulation. You didn't know that, did you?

Mr. FEERST. No, I didn't, sir.

Senator SIMPSON. And in there, quality control is so underlaying and underlying, especially since the lessons learned at Three Mile Island and other things, that I would have a lot of trouble with that theory of yours. I have a rollcall vote which I must do. We're just about at the break point. I appreciate your testimony. I hear what you're saying, but would you say that we should just eliminate adjustment of status as an alternative?

Mr. FEERST. I think that we should not allow student graduates, foreign student graduates to remain in this country under any conditions.

Senator SIMPSON. That's rather succinct.

Mr. FEERST. I am an engineer, Senator.

Senator SIMPSON. Yes, I have a brother-in-law who is an engineer. [Laughter.]

So that will conclude this portion, and I will, instead of holding you here, we will then have about a 7-minute recess while I go vote. And I thank you very much. You've been very helpful.

[Recess.]

Senator SIMPSON. Well, we'll proceed with the final panel of the afternoon.

Mr. Sam Bernsen, Esq. Nice to see you again. Charles Foster, Esq., president of the American Immigration Lawyers Association, Houston.

I should mention Sam is with the firm of Fragomen, Del Ray & Bernsen, Washington.

Mr. Richard Goldstein—did I say that correctly?—Esq., president of the New York Chapter of the American Immigration Lawyers Association. Good to see you, sir. And Esther Kaufman, Esq., Law Offices of Esther Kaufman.

So if you will please proceed in that order, and recognizing the time limitation, and I will appreciate hearing your testimony.

STATEMENT OF SAM BERNSEN, ESQ., FRAGOMEN, DEL RAY & BERNSEN, WASHINGTON, D.C.

Mr. BERNSEN. Thank you.

I'm going to talk about adjustment of status, whether we should keep it or kill it, and I'd like to start by saying that to help combat the illegal alien problem and reduce the immigration workload, it is frequently suggested that the statute which allows aliens to adjust their status be repealed.

This is section 245 of the Immigration Nationality Act.

Those who favor repeal believe that if adjustment is no longer possible, these aliens would have to depart from the United States and remain abroad like other prospective immigrants until they are reached on the visa waiting list.

Unfortunately, these advocates misconstrue the statute, overlook the history of the legislation, and also overlook the ultimate fact that shifting the workload from immigration offices to equally overburdened consular offices does not eliminate the workload.

We have to remember that the heart and soul of the adjustment statute is immediate availability of an immigrant visa. Unless that visa is immediately available, the alien is not eligible for adjustment.

So if the alien in the United States can readily obtain a visa and is not within any of the excludable classes, what useful purpose is served by making that alien leave the United States, get his visa from the consul and come back to this country?

HISTORY OF ADJUSTMENT OF STATUS

Let's take a look at the history of the adjustment provision. It was first introduced as section 245 of the Immigration Act, which became effective in 1952. Under the earlier law, the 1924 act, which established the consular visa system, every prospective immigrant had to apply to a consular officer outside the United States, proceed to a U.S. port of entry, undergo inspection by an Immigration officer, and be admitted as a permanent resident.

In other words, the journey to permanent residence always had to begin in the office of the U.S. consul abroad.

In 1935, congressional and public complaints about the rigidity of this requirement with respect to admissible aliens who were al-

ready in the United States and could readily obtain visas forced the creation of an imaginative administrative device called preexamination.

Before preexamination, for example, a Turkish citizen who entered the United States as a visitor and married a United States citizen would have to go all the way back to Turkey, apply to a consul for an immigrant visa, return to the United States, and then be admitted at a port of entry as a permanent resident.

This literal adherence to the law was bitterly criticized as a triumph of form over substance. If an alien was admissible and could readily obtain a visa, why should he be subject to such a purposeless procedure?

So the administrators looked for an answer. They found a partial one in preexamination. Instead of making our alien go all the way back to Turkey, arrangements were made to facilitate his entry for a brief period into Canada, instead of going all the way back to Turkey, to apply for an immigrant visa before an American consul in that country.

Now this preexamination procedure entailed a complex process. First, the determination had to be made by an immigration officer whether the alien should be accorded this privilege of preexamination. A preliminary inspection in the United States had to be conducted. That's how it got the name preexamination, and this preliminary inspection was to determine in advance if the alien would be admissible when he came back from Canada.

A trip to Canada was required. The alien had to appear before a consul to apply for the visa; assurances had to be given to the Canadian Government in each individual case that the alien would be readmitted if the visa was refused, and then there was a second immigration inspection when the alien came back.

To say the least, this practice was exceedingly cumbersome and probably involved the greatest paper shuffle in the history of the U.S. immigration system.

Now enactment of the adjustment statute in 1952 was intended to end this 27-year preexamination practice. In its original form section 245 made only a timid start. It was loaded with restrictions.

The key elements, as in the present statute, were availability of a visa and admissibility to the United States. Also, as under the present law, approval was a matter of discretion.

However, eligiblity was so restricted that only an alien who entered as a bona fide nonimmigrant and continued to maintain such status was eligible. The only nonquota immigrants declared eligible under that initial statute were the spouse and children of U.S. citizens, and they had to show that they were in the United States at least a year prior to acquiring nonquota status.

These provisions were so restrictive that few persons could qualify, and this cumbersome preexamination procedure had to be revived.

Well, over the years there were a number of amendments of section 245 to ease some of these restrictions and make the system work better.

We can see that the adjustment provision was the result of many years of experience and many modifications, that it does not contribute to the illegal alien problem. There is no evidence whatever

that it contributes to the illegal alien problem, since aliens who enter without inspection are ineligible, and in order for the alien to adjust, he must be fully admissible, just as an immigrant must be fully admissible when he applies to an American consul. Elimination of adjustment status would merely shift the workload to the consul, but would not eliminate the workload involved.

I urge the Congress to retain the adjustment provision.

Senator SIMPSON. Thank you very much. Mr. Foster next, please.

[Mr. Bernsen's statement follows:]

PREPARED STATEMENT OF SAM BERNSEN*

ADJUSTMENT OF STATUS: KEEP IT OR KILL IT?

To help combat the illegal alien problem and reduce the INS adjudications workload it is suggested from time to time that the statute authorizing aliens in the United States to adjust their status to lawful permanent residents be repealed. Section 245, Immigration and Nationality Act, 8 USC. The popular belief among the advocates of repeal is that if adjustment is no longer possible, these aliens would have to depart and remain abroad like other prospective immigrants until they are reached on the visa waiting list.

Unfortunately, these advocates misconstrue the statute, ignore the history of this legislation and overlook the ultimate fact that shifting a workload from immigration officers to consular officers does not eliminate it.

The heart and soul of the adjustment statute is immediate availability of an immigrant visa. Unless it is immediately available to him, the alien is not eligible for adjustment. Thus, if an alien in the U.S. can readily obtain a visa and is not within any of the excludable classes, what useful purpose is served by compelling the alien to depart and get his visa from a U.S Consul abroad?

Immigrant visas are deemed to be immediately available only to aliens exempt from the numerical limitations, and to non-exempt aliens whose turn on the waiting list has been reached. Exempt aliens include persons such as the spouses and children of U.S. citizens. Non-exempt immigrants are other close relatives of U.S.

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* Sam Bernsen is the former General Counsel of INS. Before that he was Assistant Commissioner for Adjudications. At one point in his career of over 35 years with INS he served as a District Director (New Orleans). He has been a practicing attorney in Washington, DC since his retirement from INS in 1977. He recently served as Director of Legal Research for the Select Commission on Immigration and Refugee Policy and is an Adjunct Professor of Law at Catholic University's law school.

citizens, spouses and unmarried sons and daughters of lawful residents, and needed workers who have been certified to be in short supply in the U.S. Thus with respect to the key requirements for immigration, visa availability and admissibility, an alien in the U.S. is on the same footing as the alien abroad. Neither can become a permanent resident unless he qualifies for immigration status through approval of a petition, and can readily obtain a visa. Like the applicant applying to a consul abroad for an immigrant visa, the adjustment applicant in the U.S. must undergo medical checks, criminal and security checks, pay filing fees and establish that he was never convicted of trafficking in narcotics, is not likely to become a public charge, was never a member of a communist organization, and is not within any of the other numerous grounds of exclusion.

However, the adjustment applicant is subject to special eligibility requirements. Entry without inspection, admission as a crewman or in transit, or employment without permission (with certain exceptions for immediate relatives of U.S. citizens) preclude adjustment. Moreover, an alien who meets all the statutory requirements for adjustment may nonetheless be turned down in the exercise of the Attorney General's discretion by one of the hundreds of immigration officers to whom that discretion has been delegated. In other words, what a review of the statute tells us is that the adjustment applicant in the U.S. and the visa applicant abroad are in the same position with respect to the key elements of visa availability and admissibility but to discourage evasion of the consular process and certain immigration violations, only adjustment applicants are subject to special eligibility requirements and the exercise of discretion.

Let us review the history of the adjustment provision. It was first introduced as Section 245 of the Immigration and Nationality Act which became effective December 24, 1952. Under the 1924 Act which established the consular visa system, every prospective immigrant had to apply to a U.S. consular officer abroad, proceed to a U.S. port of entry, undergo inspection by an immigration officer and be admitted as a permanent resident. In other words the journey to

permanent residence had to begin in the office of a U.S. consul abroad. In 1935 Congressional and public complaints about the rigidity of this requirement with respect to admissible aliens in the U.S. who could readily obtain visas forced the creation of an imaginative administrative device called pre-examination. Before pre-examination a Turkish citizen, for example, who had entered the U.S. as a visitor and married a U.S. citizen would have to go back to Turkey, apply to a Consul for an immigrant visa, return to the U.S. and then be admitted at a port of entry as a lawful permanent resident. This literal adherence to the law was bitterly criticized as a triumph of form over substance. If an alien was admissible and could readily obtain a visa, why should he be subject to such a purposeless procedure?

Pre-examination was a partial answer. Instead of compelling the alien to return to Turkey, arrangements were made to facilitate his brief entry into Canada to apply for an immigrant visa before an American Consul in that country. The procedure entailed a complex process: a determination by an immigration officer whether an alien should be accorded the privilege of preexamination; a preliminary inspection in the U.S. to determine in advance the alien's admissibility when he applies to re-enter with his immigrant visa; a trip to Canada to appear before a U.S. Consul to apply for the visa; an assurance to the Canadian government in each individual case that the alien would be readmitted to the U.S. if the visa was refused; and a second immigration inspection upon the alien's return to the U.S. to seek re-entry as a lawful permanent resident. To say the least the practice was exceedingly cumbersome and probably involved the greatest paper shuffle in the history of the U.S. immigration system.

Enactment of the adjustment statute in 1952 was intended to end the 27 year pre-examination practice. In its original form, Section 245 made only a timid start. The key elements, as in the present statute, were availability of a visa and admissibility to the U.S. Also, as under present law, approval was a matter of discretion. However, eligibility was restricted to an alien who had entered the U.S. as a bona fide nonimmigrant and had continu-

to maintain such status. The only non quota immigrants declared eligible under the initial adjustment statute were the spouses and children of U.S. citizens and they had to show that they had been in the U.S. at least one year prior to acquiring such non quota status. These provisions were so restrictive that few persons could qualify and pre-examination had to be revived.

On August 21, 1958, Section 245 was amended. Except for natives of contiguous territories and the adjacent islands, both quota and non quota immigrants were declared eligible, no prior period of residence was specified and maintenance of nonimmigrant status was not required. With some of the more restrictive features lifted, a marked increase in applications resulted.

More amendments followed eliminating old restrictions and creating new ones. The Act of July 14, 1960 discontinued the requirement for entry as a bona fide nonimmigrant and all aliens were declared eligible if inspected and admitted or paroled into the U.S. except crewmen and aliens who are natives of contiguous territories or adjacent islands.

The amendment of October 3, 1965 declared all Western Hemisphere natives ineligible, not just those born in contiguous territory or adjacent islands.

Eleven years later came the Immigration and Nationality Act amendments of October 20, 1976 restoring eligibility of Western Hemisphere natives, including those born in contiguous territory and adjacent islands. However, a new restriction was introduced. An alien who worked without permission was declared ineligible unless he or she was the spouse or unmarried minor child of a U.S. citizen or the parent of an adult U.S. citizen. Aliens admitted in transit were also declared ineligible, thus legislating the administrative practice.

Over a quarter of a century has passed since the first timid enactment of the adjustment statute in 1952. Has it ended pre-examination? It has not. Pre-examination still continues today, although in a modified form. It is now called by the Department of State "state-side criteria". Under that criteria an alien in the U.S. who is statutorily ineligible for adjustment because of the manner of his entry or his status at entry or the acceptance of unauthorized employment, may apply to an American Consul in Canada for an immigrant visa, if he has been classified as an immediate relative of a U.S. citizen or as a first or second preference immigrant or as a refugee. Thus where the adjustment statute is too restrictive, it has to that extent kept the cumbersome pre-examination process alive.

Thus we see that the adjustment provision was the result of many years of experience and numerous modifications, that it does not contribute to the illegal alien problem, as aliens who enter without inspection are ineligible, that adjustment applicants must be fully admissible with an immigrant visa immediately available, and that elimination of adjustment of status would shift, but not eliminate the workload involved.

I urge the Congress to retain the adjustment provision.

STATEMENT OF CHARLES C. FOSTER, ESQ., PRESIDENT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, HOUSTON, TEX.

Mr. FOSTER. Thank you, Senator Simpson.

I am pleased to have this opportunity again to testify before your subcommittee on behalf of the American Immigration Lawyers Association.

Like Sam Bernsen, I, too, have been asked to talk about adjustment of status, and again I am pleased to have that opportunity.

As Sam indicated, Congress has, over a period of 30 years, expanded upon the concept of adjustment of status under section 245 of the Immigration Act in light of what we believe are strong humanitarian needs and business realities of the world today.

Therefore, our association urges the retention of section 245 substantially as it is today. If it did not exist, in fact, we believe that Congress would have to fashion a similar remedy for the reasons I am going to describe in the few minutes allotted.

Under the present law, as Sam indicated, no alien benefits, no alien cuts in line in order to become a permanent resident, by the adjustment of status procedure.

In fact, the alien must be fully qualified and nonexcludable; he must have had a valid entry into the United States; he must not be excludable under any grounds; a visa number must have been established and be immediately available, either because he's an immediate relative or under one of the preferences; and except for immediate relatives, he must not have engaged in any unauthorized employment that would have violated his temporary status in the United States.

Should we not have a procedure such as 245, the alien, his wife, and his children would be forced to engage not only perhaps in substantial expense and time, but risk the possibility of disrupting their stay in the United States.

In fact, what happens is that many people enter the United States each year in a variety of nonimmigrant statuses, but only a relative few will ever apply for adjustment of status. I looked at the 1979 statistics and it showed that there was somewhere close to 166 million individuals who entered the United States in some immigrant or nonimmigrant status. Yet no more than approximately 100,000 actually adjusted their status in the United States to lawful permanent residents. Those numbers show that the adjustment of status procedure is not being abused.

In other words, large numbers of aliens are not coming to the United States and turning around and filing for adjustment of status. I think the number who adjusts represents less than one one-hundredth of 1 percent of the total number of people that were admitted in the United States in any given year, who actually applied for adjustment of status in the United States.

The realities are that individuals who do come here in one of the nonimmigrant statuses which Congress has established that permits them to work, a small percentage of them will stay a year or more or longer, they and their families will develop certain ties. Their children will be in school. The individual will have an important work assignment on behalf of a multinational corporation, and then to require that individual to return artificially abroad for a final interview, to take his wife and his children, would only, in my opinion, benefit the airline industry. I see no other benefit.

The danger is not only that it would disrupt their stay temporarily in the United States, but it is not unusual, once that person goes before a consular officer, for the consular officer to inform him that he's missing a document, or that some other technical problem exists, and when that individual is abroad in that situation, he's very vulnerable. He's not eligible at that time to return to the United States in any temporary status, and so what could happen is that the beneficiary and his family members may all be stranded abroad for weeks or months until such time as the technical problem is worked out; whereas if he applied for adjustment of status and there was some technical problem, then he's not off the job and his kids are not out of school.

The real question is, if we eliminated section 245, what purpose would be accomplished? Would it decrease illegal immigration? And the answer is no.

In fact, the argument could be made that section 245 encourages individuals to maintain their lawful status, because only those in

the United States in lawful status are eligible for adjustment of status.

So, in effect, if section 245 adjustment is an incentive for anything, it's an incentive that the individual abide by the U.S. Immigration laws and not violate his temporary status or his permission to be in the United States.

I would like to comment in the time remaining about a similar concept, and that is change of status which, as opposed to adjustment of status, refers to changing one nonimmigrant status—for example, a student, to another nonimmigrant status. And for all the reasons I have just stated we would support the same.

It makes no sense if a person is otherwise qualified for another nonimmigrant status provided for by Congress, to force that person, artificially, to go abroad.

In fact, all you have done is created more work for an already overburdened bureaucracy. You have not only one level of government, the U.S. Immigration and Naturalization Service, involved, but you are adding another level of review with the consular post abroad.

Thank you, Senator Simpson, for this opportunity.

Senator SIMPSON. Thank you very much, Mr. Foster. I appreciate that.

Mr. Goldstein.

[Mr. Foster's statement follows:]

PREPARED STATEMENT OF CHARLES C. FOSTER

THE NEED TO RETAIN §245 ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENCY

INTRODUCTION

I am pleased to have this opportunity to testify on behalf of the American Immigration Lawyers Association concerning Section 245 of the Immigration and Nationality Act. The American Immigration Lawyers Association, founded in 1946, is an association of over 1,500 attorneys who practice in the field of immigration and nationality law. The Association currently has 24 chapters throughout the United States, and members at large in U.S. territories, Canada, Mexico, and Europe. The Association was organized to advance the science of law pertaining to immigration, nationality, and naturalization matters, to elevate the standards of professional integrity within the immigration bar, and to facilitate the administration of justice in the field.

Section 245 of the Immigration and Nationality Act provides for the adjustment of status to lawful permanent residency of aliens lawfully admitted into the United States who are otherwise eligible for permanent residency, either by qualifying for an immediately available visa number under one of the preferences, or by having established themselves as being an immediate relative of a United States citizen. In addition, the alien must not be otherwise excludable under one of the grounds of exclusion set forth in Section 212(a) of the Act. The major advantage to the immigration system provided by Section 245 is that it permits qualified aliens to adjust their status without having to leave the country, and it is well-established that this straightforward provision has saved both alien and the U.S. Government a substantial amount of time and money.

HISTORICAL BACKGROUND

While the Immigration Act of 1924 provided that aliens would apply for an immigrant visa to the United States abroad at an AmericanConsulatethe modern transportation systems of the Twentieth Century made it feasible for large numbers of individuals to enter the United States in various non-immigrant visa classifications. Non-immigrants ranged from simple "visitors for pleasure", to corporate executives or personnel on temporary H or (in 1970) L-1 non-immigrant visas.

By 1935, as a result of the complications arising from the 1924 Act's requirement that otherwise eligible aliens, within the United States, appear for their final interview for an immigrant visa before an American Consular Officer abroad, the concept of "pre-examination" in Canada was devised by the Immigration Service. Pre-examination permitted the alien to appear before an American consular officer in Canada rather than incurring the time, expense, and even possible jeopardy, of returning to the home country. The alien's eligibility for pre-examination was based upon preliminary inspection by the Immigration Service, physical presence in the United States, and the forwarding of appropriate documentation to the designated consular post in Canada. If found eligible, the alien was then scheduled to go to Canada for a hearing at the designated American consular office, and the Government of Canada would be assured, in each case, that the alien would be permitted to re-enter the United States should the immigrant visa be denied. The alien would be subsequently re-inspected by an immigration inspector upon seeking to enter the United States through a port of entry. Section 245 was enacted in 1952, and amended in subsequent years, to eliminate the inefficientand unnecessary pre-examination process for prospective immigrants. Pre-examination still exists to a li[illegible]ed extent in the form of a procedure known as "stateside criteria", whereby applicants for certain immigrant visas, physically present in the United States and lawfully admitted,

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may appear before an American consular officer in Canada for a determination on the application.

LEGISLATIVE HISTORY OF SECTION 245 OF THE 1952 IMMIGRATION AND NATIONALITY ACT

Congress had clearly lost faith in the pre-examination procedure. Dissatisfied with the burdensome practice of pre-examination whereby certain aliens were authorized to travel to Canada for the purpose of adjusting their immigration status, Congress enacted Section 245 as part of the 1952 Act. Thereafter, certain classes of aliens lawfully in the United States in a temporary status could, given certain prescribed conditions, adjust to permanent resident status without having to leave the country. Indeed, Senator McCarran's bill, in the words of the Conference Report, proceeded on the theory that pre-examination was "cumbersome, obsolete and, as practiced, contained certain loopholes for the admission for permanent residence, of undesirable aliens."

There were so many private immigration bills clogging the Congressional calendar in response to the administrative inadequacies of the pre-examination system that many Congressmen viewed Section 245 as a major step forward towards allowing Congress enough time to enact a comprehensive overhaul of the nation's immigration laws. Congressman Dolliver, an Iowa Republican, in commending Section 245, to Congressman Walter, co-sponsor of the McCarran-Walter Act, and floor leader in the House debate, made the following observation:

> A provision which will be of great importance in eliminating private immigration bills is that which has to do with adjustment of immigration status. Bills to adjust that status come to the floor frequently. The provision in this bill will solve that problem ... It will do a great deal of good in doing away with private immigration bills which, at best, are only a stopgap method of dealing with the very human and appealing situation.

Congress Recognized The Need To Amend Section 245

While eliminating pre-examination with passage of the 1952 Act, Congress did not supply an altogether satisfactory substitute.

In spite of the fact that adjustment under Section 245 obviated the need for a long and costly journey abroad, Congress attached such restrictions that few aliens could take advantage of Section 245 relief. As enacted, Section 245 granted the privilege of adjustment only to an alien lawfully admitted as a non-immigrant or temporary visitor, and who continued to maintain that status. In its report entitled Whom We Shall Welcome, President Truman's Commission on Immigration and Naturalization explained the deficiencies as follows:

> By denying adjustment to otherwise admissible aliens whose present status is irregular, for one or another reason, the new procedure loses one of the major benefits in the old system of pre-examination.

Pre-examination had been available to deserving aliens who did not legally enter as non-immigrants or had lost non-immigrant status. By contrast, under Section 245 as originally enacted, an alien who found his non-immigrant status impaired even for reasons beyond his control, was ineligible to adjust. In the view of Rhode Island Senator John Pastore, Section 245 "drastically curtailed the authority of the Attorney General to grant relief in deserving cases". The Truman Commission recommended that the following change be made:

> An alien in the United States in a temporary and irregular status should be given the privilege of having his status adjusted to that of lawful permanent resident without being required to leave the United States, if he is currently qualified to enter the United States under the immigration laws.

It should be emphasized that these proposed modifications still left Section 245 as a cautious and carefully guarded remedy. The alien's presence in the United States afforded him no advantage over prospective immigrants in foreign lands. Mental and physical testing, security clearance, availability of a visa number and the full satisfaction of all other qualitative

criteria remained to prevent fraud and abuse. Indeed, when Congress amended Section 245, on August 21, 1958, to broaden the discretionary authority of the Attorney General, in keeping with the Truman Commission proposals, the measured scope of the contemplated revision was apparent to supporters and opponents alike. The Chairman of the Senate's Committee on the Judiciary, Senator James Eastland, observed pointedly:

> The language of the instant bill has been carefully drawn so as not to grant undeserved benefits to the unworthy or undesirable immigrant.

The August 21, 1958, amendments did not require a prior period of residence or maintenance of non-immigrant status, and established eligibility for both quota and non-quota immigrants, except for natives of contiguous territories and adjacent islands.

Under the Act of July 14, 1960, Congress further amended the provisions of Section 245 by allowing adjustment of status for all aliens who have been inspected or paroled into the United States, except for crewmen and aliens who were natives of contiguous territories or adjacent islands. The previous requirement of entry as a bona fide non-immigrant was eliminated, allowing for adjustment of status at the discretion of the Attorney General.

Further amendments, on October 3, 1965, restricted Section 245 eligibility, excluding all Western Hemisphere natives and not just those born in contiguous territories and adjacent islands.

The most recent amendments to Section 245, enacted on October 12, 1976, and effective January 1, 1977, eliminated the discrimination between aliens of the Western Hemisphere and Eastern Hemisphere. Section 245 eligibility for adjustment of status was restored to otherwise qualified aliens of the Western Hemisphere including natives of contiguous territories and adjacent islands. The 1976 amendments, however, placed a new restriction on Section 245 eligibility by providing that aliens, other than immediate relatives

of U.S. citizens, who, on or after January 1, 1977, "continues in or accepts unauthorized employment prior to filing an application for status" are barred from adjustment under Section 245(c)(2). Previously, unauthorized employment was only a factor to be considered as a matter of discretion. Matter of Yarden, 15 I & N Dec. 729 (B.I.A. 1976). Effectively, Congress rescinded the discretion granted in the earlier legislation, so that presently aliens who are working without proper non-immigrant visa status are ineligible for Section 245 adjustment of status on a matter of law.

PRESENT PROCEDURE FOR ADJUSTMENT OF STATUS

Today, for any individual to file an application for adjustment of status as permanent resident the completed form, Form I-485, must be submitted with the District Office of the U.S. Immigration and Naturalization Service having jurisdiction over the alien's place of residency. The alien must not be excludable from admission into the United States under any of the 33 categories set forth in Section 212(a). Unless a waiver of such ground of excludability is available and has been obtained, the alien may be ineligible for adjustment of status.

The applicant for adjustment must have established eligibility either 1) as an immediate relative of a U.S. citizen or, for preference status, 2) under one of the family preferences set forth in the first, second, fourth, and fifth preferences, or 3) under the third or sixth preference categories, through an employer who has proved the unavailability of U.S. workers for the position. If the individual is an immediate relative or visa numbers are immediately available under the applicable preference category, an individual may file the appropriate visa petition simultaneously with the application for adjustment of status. If visa numbers are not available, the individual must wait until visa numbers become available based upon the alien's priority date. Priority dates are established when the

appropriate visa petition was either filed by the alien's U.S. citizen parent (first or fourth preference), permanent resident spouse or parent (second preference), brother or sister (fifth preference), or by the employer (third or sixth preference) with an accompanying labor certification from the U.S. Department of Labor, verifying that the employment of the alien will not adversely affect U.S. workers.[1]

Section 245(c) excludes from eligibility alien crewmen, aliens admitted in transit without a visa, exchange visitors who are subject to the two-year foreign residency requirement, and individuals, other than immediate relatives, who have engaged in unauthorized employment after January 1, 1977.

Normally, authorized employment would include employment consistent with one of the non-immigrant visa classifications that contemplate work within the United States. Such classifications with inherent work authorization are A for consular officers, B-1 for individuals temporarily on business in the United States, E-1 for treaty traders, E-2 for treaty investors, F-1 for students with temporary work or practical training authorization, G for representatives of an international agency within the United States, H-1 for aliens of distinguished merit and ability, H-2 for temporary workers, H-3 for trainees, I for representatives of international media, J-1 for exchange visitors, J-2 for exchange visitors' spouses with work authorization, and L-1 for intra-company transferees.

In addition to the foregoing classes, the U.S. Immigration and Naturalization Service has granted employment authorization in certain specific cases, involving asylum applicants, refugees, individuals covered by the Silva v. Levi case, and in limited special circumstances, such as when work authorization was granted by the INS Central Office to the Nicaraguans several years ago.

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[1] A priority date for an individual labor certification is established by regulations when the application for labor certification is accepted for processing by the appropriate state employment agency. 8 C.F.R. §204.1(c)(2); §245.1(g).

Even if the alien was otherwise qualified, adjustment of status under Section 245 is a matter of administrative discretion. However, in the absence of adverse factors, adjustment of status will normally be granted. Matter of Arai 13 I & N Dec. 494 (BIA 1970). Adverse factors, such as preconceived intent to become a permanent resident, may be offset by showing unusual or even outstanding equities such as family ties, undue hardship, and length of residence in the United States, all of which would be considered as countervailing factors meriting the favorable exercise of administrative discretion.

Documentation Filed With An Application for Adjustment

The appropriate application for adjustment of status on Form I-485 is filed with the prescribed filing fee of $30.00 for each applicant and any spouse and unmarried children under the age of 21. The application is filed with the District Director of the U.S. Immigration and Naturalization Service having jurisdiction over the alien's intended place of residence. 8 C.F.R. §245.2(a)(1)

The application for adjustment must be filed with either a notice of approval of the appropriate visa petition, or with the original visa petition simultaneously if visa numbers are presently available. Additionally, the individual must file biographical data on Form G-325A, appropriate birth and marital records, photographs, and fingerprints on FBI Form FD-258, which will be investigated to determine whether or not the applicant has a criminal record within the United States. Affidavits of support from family members, to establish that the alien will not become a public charge, and the results of a medical examination, establishing that the individual is not excludable from the United States on health grounds, must be submitted with the application for adjustment of status.

One-Step Process

Until recently, subsequent to filing the Form I-485 adjustment of status application, the alien would be advised

on a Form I-246 of a date and place of his interview or hearing before an immigration examiner on the application for permanent resident status. According to the procedures promulgated on May 18, 1979, based upon a successful experiment in the Houston District Office, it has become possible to have what has been termed a "one step" adjudication on the same day that the application for adjustment of status and all required supporting documents are properly filed. Operating Instruction 245.2 The Central Office of the U.S. Immigration and Naturalization Service has instituted the "one step" procedure as a means to accelerate the adjudication of applications, and to minimize the possibility that documents will be lost in the process.

In a "clean" case, where all documents are available and the applicant establishes prima facie eligibility, a well-trained immigration examiner - in a matter of ten minutes or less - may interview the applicant, initiate the necessary security clearance processes with the FBI and the appropriate consulates abroad, and request a visa number from the Visa Office of the U.S. Department of State. After the prescribed 60-day period, during which the FBI and the consulates have advised the District Office of the U.S. Immigration and Naturalization Service as to whether or not there is any criminal or other adverse information regarding the applicant, the immigration examiner may then adjudicate the application for adjustment as a permanent resident, provided that a visa number (where required) has been received from the Visa Office.

Alien's Status While Application for Adjustment is Pending

While the application for adjustment of status is pending, the applicant will be administratively granted "employment authorization" if prima facie eligibility has been established. During such period of time, the applicant may not leave the United States without being deemed to have abandoned the application for adjustment of status, unless the alien first secures permission known as "advance parole" from the District Director. Generally,

advance parole may be granted at the District Director's discretion only where the applicant has established either a business necessity or a family emergency. 8 C.F.R. §212.5; Operating Instruction 212.5(c).

ADIT (Alien Documentation Identification & Telecommunication) Card

When the application for adjustment of status is approved, the immigration examiner will issue a notice of approval on Form I-181B, with a stamp evidencing temporary proof of lawful admission for permanent residence. Such endorsement is normally limited to 60 days, so that the applicant will not attempt to use the temporary form after the period during which he should have received his Alien Documentation Identification & Telecommunication System card (sometimes known by its acronym as the "ADIT" card, or, more popularly, as the "green" card).

It is only after the approval of the application that the INS District Office sends copies of the photographs, along with Form I-89 which contains the alien's right index fingerprint and signature, to the INS processing center in Arlington, Texas. Normally, it takes six months or longer for the card to be issued, due to the stringent photograph and fingerprint requirements. In fact, it is not unusual for a year or more to elapse before the approved permanent resident receives the actual card, or is requested on one or more occasions to return to the District Office for new photographs and/or fingerprints in order to meet the stringent requirements. Such requirements were introduced in July, 1978, in order to make the card readable by computers. However, at the present time no such computers exist and the exacting requirements for photographs and fingerprints demand substantial additional administrative time and effort from the INS.

Denial of the Application for Adjustment of Status

Should the application for adjustment of status be denied, no formal appeal procedure is provided for other than filing a

motion to reopen, based upon new and previously unavailable facts, or filing a motion to reconsider, based upon issues of law that are alleged to have been erroneously decided. 8 C.F.R. §103.5 Filing such motions would not prevent a deportation proceeding from being commenced by the District Director.

Appeal of Denial of Application for Adjustment in Subsequent Deportation Proceedings

While there is no formal appeal of a denial of the application for adjustment of status, should deportation proceedings be commenced by the District Director, the application may be renewed by filing it directly with the Immigration Judge. The Immigration Judge will then determine whether or not the alien is deportable, and may consider the application for adjustment of status on a discretionary basis. Should the application be denied by the Immigration Judge, identifiable grounds for such denial must be stated to provide a basis for review. Matter of Aguirre, 13 I & N Dec. 661 (BIA 1971) In connection with such proceedings, the Immigration Judge has the authority to decide any appropriate application for permission to reapply, and may adjudicate waivers of any grounds of excludability, if available. Matter of Vrettakos, 14 I & N Dec. 593 (BIA 1973, 1974). The trial attorney, representing the District Director, would also have the authority to adjudicate any concurrent visa petitions.

Rescission of Approved Adjustment of Status Application

Even after adjustment of status has been granted, it may be rescinded by the Attorney General within five years, if the Attorney General determines that the applicant was not eligible for adjustment at the time the application was filed. §246(a), I & N Act; 8 C.F.R. 246.

RETENTION OF SECTION 245 ADJUSTMENT OF STATUS JUSTIFIED ON HUMANITARIAN AND PRAGMATIC GROUNDS

Periodically, it has been suggested that Section 245, providing for adjustment of status, should be eliminated on the grounds that

it encourages or increases illegal immigration, or that it has been abused. Nothing could be further from the truth. The Board of Governors of the American Immigration Lawyers Association, at its most recent Board of Governors Meeting, held on November 13, 1981 strongly supported the retention of Section 245, on both humanitarian and pragmatic grounds.

The Board recognized the severe, even irreparable, hardship that would be suffered by the alien and his family should Section 245 be repealed. Statistics published by the U.S. Immigration and Naturalization Service support the fact that use of Section 245 has not been abused, but, in fact, has been of great benefit to the system. The elimination of Section 245 will result in a tremendous increase in work at both District Offices and the many consulates abroad, hardly a benefit to a system which is already struggling to process multitudes of prospective immigrants.

The Board emphasized the severe detriment to the American economy that would result from the elimination of, or additional restriction of, Section 245.

Finally, the Board noted that Section 245 actually serves to deter illegal immigration, and the elimination of Section 245 will result in an <u>increase</u> in illegal immigration by creating unnecessary and irreparable hardships to the alien and his family.

As noted previously, Section 245 was originally enacted in 1952, and amended in subsequent years, for humanitarian purposes. The crucial question to be answered at this time, in response to criticism of Section 245, is: What possible benefit would be achieved by eliminating or further restricting a section of the law that has been carefully developed and refined by Congress over a thirty-year period?

<u>Elimination of Section 245 Will Cause Irreparable Hardship To Alien</u>

To require alien applicants for adjustment of status and their families to physically disrupt their temporary residence in the United States, leave their jobs, schools and homes for an

indefinite period, to return abroad for a final hearing (and under often uncertain social, political and economic conditions) will obviously result in irreparable harm and undue hardship in many cases. The large expense incurred by the alien, would only benefit the airline industry, and would be a tragic waste of an immigrant's often limited resources. Even in the best prepared cases, when the alien does appear before the American consular officer for a hearing on the immigrant application, should a document be missing or more information be required from the INS District Office which approved the visa petition, months of delay can be incurred. During this indefinite period of time, a key executive or worker, his wife and his school-age children could be stranded abroad, unable to return for both financial reasons and a possible inability to qualify for a temporary non-immigrant visa during the interim period.

Elimination of Section 245 Will Create More Work And Greater Expense For An Already Overburdened Immigration System

Elimination of or further restrictions on Section 245 could certainly not be justified at a time of increasing concern for the need to reduce Federal spending. If Section 245 was eliminated, an additional level of Federal review would be created for a second Federal agency, without any corresponding benefit. Indeed, such a change would be to the substantial detriment of the immigration system. Far more work would be required from employees of American consulates abroad as well as the INS, resulting in longer delays and increased expenditures from all parties concerned.

Needs of American Industry Necessitate Retention of Section 245

In fact, the need for the Section 245 adjustment of status provision is so compelling, that if Section 245 did not exist today, its enactment by Congress would be necessitated in order to streamline an already-overburdened immigration system. As a result of the tremendous expansion of American trade abroad, and its operations, an urgent need exists, by both small, medium and

large-sized U.S. corporations, to regularly hire and transfer key qualified aliens of distinguished merit and ability for work in the United States.

American industry,which depends upon an incredibly complex international network of operations, relies upon the expedited transfer of key personnel to the United States, and the elimination or further restriction of Section 245 would severely impede the competitive position of U.S. companies in world markets. This, of course, would have a detrimental effect on the U.S. balance of payments and other inevitable repercussions. Companies in the United States rely, to a great extent, on highly skilled, irreplaceable foreign workers and should Section 245 be eliminated, American industry will suffer immeasurably.

Statistics Indicate The Non-Immigrant Visa Process Has Been Used Legitimately By Applicants For Adjustment

In 1979, the last year for which an Annual Report of the U.S. Immigration and Naturalization Service is available, 166 million aliens were inspected, and were eligible for admission. In contrast, only 101,397 aliens (or less than one-tenth of one percent of the total number of aliens inspected) qualified to adjust their status under Section 245, out of the total of 601,442 who became permanent residents in Fiscal 1978. Although the Fiscal 1978 figure of 101,397 represented an increase from 54,523 for Fiscal 1977, this increase can be directly attributed to the 1977 amendments extending Section 245 benefits to the Western Hemisphere.

It has been noted that among those who did adjust under Section 245 within the Eastern Hemisphere, "immigrants in the occupational preferences were most likely to adjust". Inter-agency Task Force on Immigration Policy: Staff Report (March, 1979) This was due to the necessity of a relatively small percentage of non-immigrants in lawful status to adjust while on the job, rather than to disrupt their assignments by returning abroad to complete the immigration process. A small, but nevertheless significant, number of non-

immigrants who work in the United States for U.S. companies, for several years or more, will establish such strong ties to the United States that it is neither in their interest or in the interest of the United States to force them to return upon expiration of their non-immigrant status. Often their children enter the American school system and are "Americanized" within a few years, and are not prepared to return to their home country, and indeed will be irreparably harmed. Many such aliens will also become so indispensable to the company that the company will have no alternative but to seek permanent resident status for such valuable employees. Clearly, the above information indicates that the non-immigrant visa process has been used legitimately by individuals filing applications for adjustment of status within the United States, and abuse of the system rarely occurs due to Section 245's stringent requirements for adjustment.

Elimination of Section 245 Will Increase, Not Deter, Illegal Immigration

Contrary to arguments raised in favor of eliminating Section 245, this provision actually serves as an incentive to immigrate legally to the United States by allowing for adjustment to permanent residency. In order to legally adjust under Section 245, an alien must comply with all of Section 245's stringent requirements (admissibility, inspection, valid visa, no unauthorized employment), in order to qualify for lawful permanent residency under Section 245, which therefore serves as an effective deterrent to illegal immigration. If Section 245 was eliminated, or restrictions placed upon it, illegal immigration would be encouraged because aliens would stay illegally rather than endure the hardship of returning abroad to a consular post for a hearing. Without the possibility of adjustment, aliens would have an incentive not to maintain their status, to engage in unauthorized employment, and avoid inspection upon entry to the United States.

CONCLUSION

In conclusion, the Association strongly supports the retention of Section 245 on both humanitarian and pragmatic business grounds. Elimination of Section 245 will result in more work for an overburdened system, greater expense to the taxpayer without any corresponding benefit, would subject the alien to severe, even irreparable hardship, and would actually encourage illegal immigration to the United States.

STATEMENT OF RICHARD GOLDSTEIN, ESQ., PRESIDENT, NEW YORK CHAPTER, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, NEW YORK, N.Y.

Mr. GOLDSTEIN. Thank you, Senator Simpson. I, too, am pleased to have this opportunity to address you and the members of the subcommittee.

Recently a European client indicated to me that the reason he wished to come to the United States for investment purposes was because he was convinced that the United States is the place where the last capitalist will die.

I think it is quite apparent that in much of Europe, and to most of the world, the United States does offer a very viable investment alternative, as well as a personal alternative, because of the growing social, political and economic uncertainties in the rest of the world.

As tensions increase in Poland, as French business people become more and more concerned with the current French Government, as social, political, and economic uncertainties continue to develop in England, as new elections suggest political change in Greece, as governments continue to collapse in Belgium, more and more Europeans are looking to the United States for investment purposes.

I have been asked to address my comments to investor visas both for immigrants as well as to the nonimmigrant E visa, and in particular the Japanese E visa situation.

It is clear that unfortunately our present system does not adequately provide for immigrant visas for investors. Unfortunately, they are categorized in the nonpreference classification, which has been unavailable since September 1978, and has been receding since December 1976. Therefore to suggest that an individual investor seek immigrant status in the United States by means of investment is essentially an Alice in Wonderland trip or an expedition to Fantasy Island.

There are alternatives, and I would suggest that the subcommittee might want to look at the current system available in England. I have attached to my testimony an analysis of the current investor immigration laws of the English Government, which do open up to people of independent means or investors, immigrant status in the

United Kingdom, provided they are willing to make a substantial investment in a bona fide business enterprise in the United Kingdom. That generally totals at the present time $195,000, or approximately 100,000 pounds sterling. They must also meet other requirements as specified in the attached memorandum.

I would also suggest that one additional fatal problem with our immigration system is that we do not adequately provide for retirees. There are literally tens of thousands of very wealthy people throughout this world who simply wish to come to this country to retire and bring their wealth to our country.

I frankly cannot envision any sensible reason for denying their admission simply on the basis of their wanting to come here with their wealth and to share their wealth with the rest of the economy of our country.

I might also suggest a system similar to what currently exists in Singapore. If an individual wishes immigrant status in Singapore, he goes before an economic review board and is presented with a list of government-approved economic investments, and if that individual subsequently makes such an economic investment, he is entitled, after character review, to immigrant status in Singapore.

I would therefore suggest that we adopt a system similar to what we have presently with foreign medical graduates where we designate certain deprived communities in the United States which are in need of medical services, and now say that if an individual investor does make a substantial investment in specially-designated programs, or in a specially-designated community which is in need of financial investment, that such an individual should be accorded immigrant status.

I cannot see any possible objection to granting lawful permanent resident status to individuals who have made substantial investments in housing redevelopment in the Bronx, who have made investments in providing kidney dialysis machines in hospitals perhaps in Los Angeles, where people are dying because of the inability to provide those services; to providing school books or buses to Appalachian schools in need of such services; to providing senior citizen support programs in Florida; or generally just to provide overall additional employment to U.S. communities which are in need of such employment.

On the E visa situation, I think one thing that should be done rather immediately is to provide for admission of E visa applicants for the duration of their visa status.

L visa individuals are currently admitted to the United States, assuming they have been given a 3-year visa, for an initial period of 3 years.

E visas are generally issued for 4-year periods, but individuals who enter the United States are generally only admitted in 1-year intervals.

I would recommend that in an attempt to curtail the unnecessary extension applications at the Immigration Service level, and to avoid the necessity for individuals to make unnecessary trips overseas, that it would be useful and meaningful to minimize that entire process by admitting E visa individuals for the full 4-year period.

The E visa problem as it now exists in Japan is rather unique. According to the State Department, there is no E visa problem. According to the Japanese Government and Japanese businesses, there is an E visa problem resulting from a divergence, or a change, in the policy of the United States in granting E visas.

I have provided the committee with a detailed analysis of that problem in my testimony and would be happy to respond to any questions you may have on it at a later time.

In conclusion, I do think it would be wise and in the interest of this country for this subcommittee to adopt a change in the law which would provide a more meaningful basis for individuals overseas with substantial wealth who wish to come to this country to make necessary investments and to be admitted as permanent residents.

Thank you.

Senator SIMPSON. Thank you very much.

Ms. Kaufman, please.

[Mr. Goldstein's prepared statement follows:]

PREPARED STATEMENT OF RICHARD S. GOLDSTEIN, ESQ.

IT IS A SINCERE PLEASURE AND PRIVILEGE FOR ME TO HAVE THE OPPORTUNITY TO SPEAK BEFORE THIS COMMITTEE AT THIS TIME. MY NAME IS RICHARD S. GOLDSTEIN AND I AM CURRENTLY SERVING IN THE POSITION OF PRESIDENT OF THE NEW YORK CHAPTER OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION. OUR ORGANIZATION HAS SOME FIFTEEN HUNDRED MEMBERS THROUGHOUT THE UNITED STATES, WITH APPROXIMATELY THREE HUNDRED AND FIFTY BEING LOCATED IN NEW YORK CITY AND NEW YORK STATE. AT THE PRESENT TIME, I AM ALSO SERVING AS THE CHAIRMAN OF THE COMMITTEE ON IMMIGRATION AND NATIONALITY LAW OF THE INTERNATIONAL BAR ASSOCIATION. THE INTERNATIONAL BAR ASSOCIATION IS LOCATED IN LONDON, ENGLAND AND ITS MEMBERS INCLUDE PRACTISING ATTORNEYS AND GOVERNMENT OFFICIALS IN ALMOST ALL COUNTRIES OF THE WORLD. I AM ALSO CURRENTLY SERVING AS THE CHAIRMAN OF THE COMMITTEE ON IMMIGRATION AND NATIONALITY LAW OF THE FEDERAL BAR ASSOCIATION WHICH HAS ITS HEADQUARTERS HERE IN WASHINGTON, DC.

I HAVE BEEN ASKED TO ADDRESS MY REMARKS TO THE ISSUE OF CURRENT PROBLEMS FOR BUSINESS PEOPLE SEEKING ENTRY INTO THE UNITED STATES. I PROPOSE TO NOT DISCUSS THE PRESENT STATUS OF THE LAW IN DETAIL SINCE I AM CERTAIN THAT ALL OF US ARE QUITE FAMILIAR WITH IT. WHAT I WOULD RATHER DO IS TO DISCUSS PROPOSALS FOR CHANGING OR MODIFYING THE CURRENT STATUS OF THE LAW TO ENCOURAGE THE DEVELOPMENT OF FOREIGN TRADE, AS WELL AS THE INPUT OF FOREIGN CAPITAL, INTO OUR COUNTRY.

I. IMMIGRANT INVESTOR VISAS

IT IS RATHER OBVIOUS TO ALL OF US THAT RECENT YEARS HAVE WITNESSED A GROWING ATTRACTION OF FOREIGN INVESTMENT, BOTH BY FOREIGN COMPANIES AND BY INDIVIDUALS, INTO THE UNITED STATES.

IT IS ALSO CLEAR THAT INVESTMENT IN THE UNITED STATES OF EXCESS OR SURPLUS CAPITAL REPRESENTS A RELATIVELY SAFE AND PROFITABLE HAVEN FOR SUCH CAPITAL. AS A RESULT, THERE IS A NOTICEABLE AND CLEARLY DISCERNABLE INPUT OF INDIVIDUAL OVERSEAS CAPITAL, AS WELL AS CORPORATE CAPITAL, IN UNITED STATES BUSINESSES, AGRICULTURAL LAND, SHOPPING CENTRES, OFFICE BUILDINGS AND REAL ESTATE FOR CURRENT OR POTENTIAL DEVELOPMENT.

IT IS ALSO QUITE APPARENT THAT THE UNITED STATES OFFERS A VIABLE ALTERNATIVE TO THE GROWING SOCIAL, POLITICAL AND ECONOMIC UNCERTAINTIES NOW EXISTING IN MUCH OF THE WORLD. THOSE OF US WHO PRACTICE IN THE FIELD OF IMMIGRATION LAW CAN EASILY ATTEST TO THE GROWING UNEASINESS OF EUROPEAN BUSINESS PEOPLE IN PARTICULAR. AS TENSIONS INCREASE IN POLAND, AS FRENCH BUSINESS PEOPLE BECOME FRIGHTENED OF POLITICAL CHANGES IN FRANCE, AS SOCIAL AND FINANCIAL DISTURBANCES AND UNREST DEVELOP IN ENGLAND, AS NEW ELECTIONS SUGGEST POLITICAL AS WELL AS SOCIAL UPHEAVAL IN GREECE, AS GOVERNMENTS CONTINUE TO COLLAPSE IN BELGIUM, THERE IS OBVIOUSLY GOING TO CONTINUE TO BE SIGNIFICANT CONCERN FOR CREATING A VIABLE ALTERNATIVE IN THE UNITED STATES.

UNFORTUNATELY, THERE IS BOTH GOOD NEWS AND BAD NEWS FOR FOREIGN INVESTORS SEEKING TO ENTER THE UNITED STATES. THE GOOD NEWS IS THAT AMERICA STILL APPEARS TO BE RIPE AND READY FOR FOREIGN INVESTMENT, AND STILL APPEARS TO BE ENCOURAGING FOREIGN CAPITALISTS WISHING TO INVEST THEIR EXCESS CAPITAL IN OUR NATION. THE BAD NEWS, HOWEVER, IS THAT OUR IMMIGRATION LAWS SURPRISINGLY MAKE FEW IF ANY CONCESSIONS TO FOREIGN INVESTORS. INTERESTINGLY ENOUGH, OUR IMMIGRATION LAWS ARE IN MANY WAYS FAR MORE RESTRICTIVE THAN N OTHER NATIONS SUCH AS ENGLAND AND CANADA AND AUSTRALIA, AND DEVELOPMENTS IN THE LAST FEW YEARS SEEM TO INDICATE THAT WEALTHY INVESTORS (BOTH COMPANIES AND INDIVIDUALS) HAVE DETERMINED THAT IT IS FAR EASIER TO SEEK ACCESS AND TO SECURE ENTRY INTO THOSE COUNTRIES THAN IT IS IN THE UNITED STATES.

I WOULD SUGGEST THAT WE CANNOT AT THE SAME TIME SEEK FOREIGN CAPITAL AND FOREIGN INVESTMENT AND PROHIBIT OR RESTRICT THE ENTRY INTO OUR COUNTRY OF THE OWNERS OR MANAGERS OR EMPLOYEES OF THAT SOURCE OF FOREIGN CAPITAL.

I WOULD EQUALLY SUGGEST THAT UNFORTUNATELY THERE IS NO PROVISION IN OUR IMMIGRATION LAWS, AT THE PRESENT TIME, FOR THE VERY WEALTHY OR FOR PEOPLE OF INDEPENDENT MEANS, WHO ARE SEEKING TO SIMPLY SETTLE IN OUR COUNTRY AND PERHAPS RETIRE HERE CAUSING NO DRAIN WHATSOEVER ON OUR ECONOMIC OR SOCIAL SYSTEM. OFTEN, IN MY TRAVELS THROUGHOUT EUROPE, I AM REPEATEDLY QUESTIONED AS TO WHY OUR SYSTEM OF LAWS DOES NOT ADEQUATELY PROVIDE FOR WEALTHY RETIRED PEOPLE WHO SIMPLY WISH TO COME TO OUR COUNTRY WITH THEIR FUNDS FOR INVESTMENT AND LIVE OFF THEIR INTEREST. IT IS DIFFICULT TO JUSTIFY TO THEM WHY WE DO NOT HAVE A VIABLE ENTRY ROUTE FOR THEM, AND TO CONSISTENTLY EXPLAIN TO THEM WHY OUR LAWS APPEAR TO TREAT THEM WITH MORE DIFFICULTY HAN THEY WOULD WERE THEY SOUTH EAST ASIAN OR CUBAN REFUGEES.

IT IS CLEAR THAT ASIDE FROM THE ECONOMIC ADVANTAGES OF DOING BUSINESS IN THE UNITED STATES, MANY EUROPEAN INDIVIDUALS IN PARTICULAR WISH TO COME HERE TO EFFECTIVELY SEEK A NEWER WORLD FOR THEMSELVES AND FOR THEIR FAMILIES. TO MUCH OF THE WORLD THE UNITED STATES IS STILL VIEWED AS AN OASIS BECAUSE OF ITS LONG TERM POLITICAL AND ECONOMIC STABILITY. IT IS PERHAPS A CLICHE TO REMEMBER THAT WE ARE, AFTER ALL, FROM BIRTH AND STILL NOW A NATION OF IMMIGRANTS. IT IS PERHAPS NOT NECESSARY TO SUGGEST THE IMPORTANCE TO OUR ECONOMIC WELL BEING IN CONTINUING TO ATTRACT AND DEVELOP NOT ONLY THE CONTINUED INPUT OF THE CAPITAL BUT, PERHAPS MORE IMPORTANTLY AND MORE MEANINGFULLY IN TERMS OF THE FUTURE, CONTINUING TO ATTRACT FOREIGN TECHNOLOGY AND TRADE AND EXCHANGE OF IDEAS THROUGH THE RELOCATION OF FOREIGN PERSONNEL AND THEIR FAMILIES IN OUR COUNTRY.

IT IS CLEARLY WORTH NOTING THAT THERE IS NO STATUTE AS SUCH WHICH AUTHORIZES THE GRANTING OF RESIDENT STATUS TO AN INDIVIDUAL WHO WILL ENGAGE IN BUSINESS IN THE UNITED STATES. UNDER CERTAIN CONDITIONS HOWEVER, WE DO INDICATE THAT SUCH INDIVIDUALS WILL NOT

BE SUBJECT TO SECTION 212 (A) (14) OF THE IMMIGRATION AND NATIONALITY ACT WHICH PROHIBITS THE ADMISSION OF CERTAIN IMMIGRANTS WHO WOULD TAKE JOBS AWAY FROM EITHER AMERICAN CITIZENS OR LAWFUL PERMANENT RESIDENTS. SUCH PROSPECTIVE IMMIGRANTS WHO ARE COMING TO ENGAGE IN BUSINESS AND WHO ARE THUS NOT ENTERING THE LABOR MARKET TO COMPETE WITH AMERICANS FOR JOBS MAY, UNDER CERTAIN CIRCUMSTANCES, QUALIFY FOR LAWFUL PERMANENT RESIDENCE ON A NON-PREFERENCE VISA BASIS.

OUR CURRENT INVESTOR REGULATIONS THEREFORE DO ENABLE AN INDIVIDUAL TO REGISTER FOR AND QUALIFY FOR AN IMMIGRANT VISA BASED UPON CLEARLY SHOWING AND DOCUMENTING THAT THAT INDIVIDUAL HAS INVESTED (OR IS ~~ACTIVELY~~ IN THE PROCESS OF INVESTING) CAPITAL TOTALLING AT LEAST FORTY THOUSAND DOLLARS IN A BUSINESS ENTERPRISE IN THE UNITED STATES, AND THAT THE INDIVIDUAL WILL BE A PRINCIPAL MANAGER OF THE BUSINESS ENTERPRISE, AND THAT THE ENTERPRISE WILL EMPLOY A PERSON OR PERSONS IN THE UNITED STATES WHO ARE UNITED STATES CITIZENS OR LAWFUL PERMANENT RESIDENTS, NOT INCLUDING THE ALIEN, HIS SPOUSE AND CHILDREN.

UNDER THIS SYSTEM HOWEVER, WE MUST CAUTION OUR CLIENTS WHO SEEK TO MAKE SUCH INVESTMENTS THAT IT IS AN "ALICE IN WONDERLAND" FANTASY AND THAT THEY ARE UNLIKELY TO SECURE IMMIGRANT VISAS FOR THE FORESEEABLE AND DEFINITE FUTURE EVEN IF SUCH INVESTMENTS ARE MADE. BECAUSE OF THE FACT THAT WE HAVE AN EXHAUSTION OF VISA NUMBERS THROUGH THE PREFERENCE SYSTEM, NON-PREFERENCE VISA NUMBERS HAVE BEEN UNAVAILABLE SINCE SEPTEMBER OF 1978 AND HAVE BEEN RECEDING IN AVAILABILITY SINCE DECEMBER OF 1976. IT IS THE CURRENT PROJECTION OF THE VISA OFFICE THAT NO NON-PREFERENCE NUMBERS WILL BE AVAILABLE AT ALL IN THE FORESEEABLE FUTURE.

WHILE IT IS TRUE THAT THE PROPOSED INCREASE IN CANADIAN VISA NUMBERS BY AN ADDITIONAL TWENTY THOUSAND WILL PROBABLY HAVE THE EFFECT OF OPENING UP (AT LEAST FOR A TEMPORARY PERIOD OF TIME) CANADIAN NON-PREFERENCE VISA NUMBERS, CLEARLY THERE IS NO BASIS FOR SUGGESTING THAT ONLY CANADIAN INVESTORS AND RETIREES SHOULD BE ABLE TO PERMANENTLY SETTLE IN OUR COUNTRY.

IT IS QUITE CLEAR THEREFORE THAT OUR CURRENT LAW OBVIOUSLY DOES NOT ENCOURAGE, AND TO SOME EXTENT CLEARLY DISCOURAGES, FOREIGNERS SEEKING TO IMMIGRATE TO OUR COUNTRY BASED ON A DESIRE TO MAKE SUBSTANTIAL INVESTMENTS HERE OR PERHAPS TO SIMPLY RETIRE HERE WITH THEIR WEALTH.

I DO CERTAINLY RECOGNISE THE FEELING ON THE PART OF MANY THROUGHOUT OUR COUNTRY THAT "FOREIGNERS SHOULD NOT BE ALLOWED TO BUY THEIR WAY INTO THIS COUNTRY". I DO, HOWEVER, THINK THAT WE SHOULD ALL REMEMBER THAT THERE HAS BEEN FOR A NUMBER OF YEARS AN INVESTOR OPTION FOR FOREIGNERS SEEKING LAWFUL PERMANENT RESIDENT STATUS IN OUR COUNTRY. IT IS ONLY BECAUSE OF THE UNAVAILABILITY OF NON-PREFERENCE VISA NUMBERS THAT THIS ROUTE BECAME UNAVAILABLE AS OF SEPTEMBER, 1978. WHAT WE SHOULD SUGGEST THEREFORE TO THE CRITICS IS THAT WE ARE NOT SEEKING TO OPEN THE DOORS OF OUR COUNTRY TO A NEW CATEGORY OF IMMIGRANTS, BUT MERELY SEEKING TO OPEN A DOOR THAT HAS LONG BEEN BUILT BUT WAS TEMPORARILY SHUT. IT SHOULD BE

MADE CLEAR THAT WE ARE NOT SEEKING TO PROVIDE THOSE WITH WEALTH WITH IMMIGRANT VISA BENEFITS TO THE EXCLUSION OF THOSE WITHOUT WEALTH. IT SHOULD BE MADE CLEAR THAT WE ARE NOT SEEKING TO GIVE TO THE WEALTHY WHAT WE TAKE FROM THE POOR, AND THAT THE UNITED STATES WILL CONTINUE TO BE A HAVEN FOR IMMIGRANTS SEEKING TO BE REUNIFIED WITH THEIR FAMILIES REGARDLESS OF THEIR ECONOMIC STABILITY OR STANDING. IT SHOULD BE REAFFIRMED AND MADE CLEAR THAT THE UNITED STATES IS, AND WILL CONTINUE TO BE, A HAVEN FOR POLITICAL, RELIGIOUS AND SOCIAL REFUGEES FROM THROUGHOUT THE WORLD IN LIMITED AND IDENTIFIABLE NUMBERS.

AS AN AMERICAN, I TAKE NO HAPPINESS IN DEALING WITH EUROPEANS ON AN ALMOST DAILY BASIS WHO HAVE MADE THE DECISION TO TAKE THEIR WEALTH AND THEIR FAMILIES, ALONG WITH THEIR BUSINESS CREATIVENESS AND TECHNOLOGY, TO COUNTRIES LIKE NEW ZEALAND, AUSTRALIA AND CANADA. I SEE NO BASIS OR JUSTIFICATION FOR OUR COUNTRY SEEKING TO CLOSE THE DOORS TO THAT MEANINGFUL INPUT OF THE VERY THINGS THAT HAVE BUILT AND SHAPED THE NATION WE NOW LIVE IN.

I AM ENCLOSING FOR THE ATTENTION OF THE COMMITTEE A BRIEF MEMORANDUM PREPARED BY MY OFFICE IN LONDON, OUTLINING THE CURRENT STATUS OF IMMIGRATION FOR INVESTORS INTO THE UNITED KINGDOM. I OFFER THIS MEMORANDUM TO THE COMMITTEE WITH THE THOUGHT THAT IT MIGHT SERVE AS THE BASIS FOR A NEW PROVISION IN OUR OWN IMMIGRATION LAWS FOR PEOPLE OF INDEPENDENT WEALTH. I WOULD SUGGEST THAT A COMPARABLE CHANGE IN OUR LAWS WOULD HAVE A MEANINGFUL IMPACT TO CONVINCING FOREIGN INVESTORS THAT THE UNITED STATES STILL REMAINS A VIABLE ALTERNATIVE RELOCATION SITE.

ONE MIGHT ALSO EXAMINE WHAT I UNDERSTAND TO BE THE PRESENT SYSTEM FOR INVESTORS SEEKING LAWFUL PERMANENT RESIDENCE IN SINGAPORE. I HAVE BEEN LED TO BELIEVE THAT THERE IS A LIST AVAILABLE TO POTENTIAL INVESTORS AND IMMIGRANTS OF THOSE COMPANIES IN SINGAPORE WHICH REQUIRE SIGNIFICANT INVESTMENTS. UPON PRODUCTION OF EVIDENCE TO DOCUMENT THE INVESTMENT HAS BEEN MADE BY THE APPLICANT IN AN APPROPRIATE AMOUNT IN AN APPROPRIATE COMPANY, CHARACTER REFERENCES AND SECURITY CLEARANCES ARE THEN ACHIEVED AND AN INDIVIDUAL MAY BE ACCORDED IMMIGRANT STATUS IN THE COUNTRY OF SINGAPORE.

I MIGHT SUGGEST RESPECTFULLY TO THE COMMITTEE THAT WE MIGHT DEVELOP A COMPARABLE SYSTEM HERE IN OUR OWN COUNTRY, COMBINING THE BEST OF THE SYSTEMS OF SINGAPORE AND THE UNITED KINGDOM. SURELY, THERE IS A RECOGNISED NEED FOR CAPITAL INVESTMENTS IN MANY SECTORS OF OUR ECONOMY. SURELY, WE CAN IDENTIFY SPECIFIC LOCAL, STATE AND EVEN FEDERAL PROJECTS WHICH HAVE HAD TO BE CURTAILED BECAUSE OF AN INABILITY TO SECURE EITHER LOCAL OR FEDERAL FINANCING.

SURELY, THERE ARE ECONOMIC COMMUNITIES WITHIN OUR COUNTRY WHICH ARE UNABLE TO HOUSE, CARE, EDUCATE OR EVEN PROVIDE PROPER MEDICAL ATTENTION TO THEIR RESIDENTS. IT MIGHT THEREFORE BE POSSIBLE TO DEVELOP A LIST OF APPROVED LOCAL, STATE OR EVEN FEDERAL PROJECTS WHICH DO REQUIRE SUCH CAPITAL FINANCING. IF AN INDIVIDUAL WOULD MAKE WHAT WOULD BE VIEWED AS A SUBSTANTIAL INVESTMENT OF HIS

OR HER FUNDS IN SUCH A PROJECT, WHICH WOULD BE VIEWED AS BEING MEANINGFUL AND PRODUCTIVE TO OUR COUNTRY, THEN LAWFUL PERMANENT RESIDENT STATUS COULD BE GRANTED TO SUCH INDIVIDUALS AND THEIR FAMILIES.

I CANNOT ENVISION ANY MEANINGFUL OPPOSITION TO A PROGRAM WHICH WOULD HAVE THE EFFECT OF IDENTIFYING THOSE SECTORS OF OUR NATION WHICH REQUIRE SUBSTANTIAL CAPITAL TO IMPROVE SERVICES TO OUR OWN CITIZENS, AND PERMIT SUCH FOREIGN CAPITAL INVESTORS TO THEMSELVES SECURE RESIDENT STATUS IN OUR COUNTRY. SURELY, WE CANNOT EXPECT FOREIGN INDIVIDUALS TO MAKE SUCH SUBSTANTIAL INVESTMENTS AND TO AT THE AME TIME DENY THEM THE RIGHT TO LIVE HERE PERHAPS PERMANENTLY WITH THEIR OWN FAMILIES.

SURELY, WE MUST ALL RECOGNISE THE BENEFITS TO OUR OWN NATION IF WE COULD DEVELOP SUCH A PROGRAM WHICH MIGHT HAVE THE EFFECT OF PROVIDING MUCH NEEDED MEDICAL EQUIPMENT AND ASSISTANCE TO OUR ILL, FOOD TO OUR HUNGRY, HOUSING TO OUR POOR, SOCIAL ATTENTION TO OUR ELDERLY AND CAPITAL IMPROVEMENTS TO OUR CITIES. SURELY, WE CAN RECOGNIZE THE IMPORTANCE OF INVESTMENT CAPITAL IN CREATING AND MAINTAINING JOBS.

II. NON-IMMIGRANT BUSINESS VISAS

WITH REFERENCE TO THOSE SEEKING TO ENTER THE UNITED STATES ON NON-IMMIGRANT, RATHER THAN IMMIGRANT VISAS, THERE CLEARLY ARE AREAS WHICH TROUBLE THE FOREIGN BUSINESS COMMUNITY AND WHICH SHOULD BE DEALT WITH BY THIS COMMITTEE.

EFFECTIVE JUNE 2, 1981 THE MAXIMUM INITIAL APPROVAL PERIOD FOR NON-IMMIGRANT VISA PETITIONS FILED ON BEHALF OF ALIENS CLASSIFIED UNDER SECTION 101 (A) (15) (L) OF THE ACT AS INTRA-COMPANY TRANSFEREES WAS INCREASED FROM ONE YEAR TO THREE YEARS. IT WAS CLEARLY RECOGNISED BY THE IMMIGRATION AND NATURALIZATION SERVICE THAT SUCH ALIENS WERE COMING TO THE UNITED STATES TO FACILITATE INTERNATIONAL TRADE. IT WAS ALSO RECOGNISED THAT INCREASING THE INITIAL ADJUDICATION AND APPROVAL PERIOD FROM ONE YEAR TO THREE YEARS WOULD CERTAINLY NOT ONLY INCREASE THE CONFIDENCE OF FOREIGN COMPANIES SEEKING TO TRANSFER THEIR INDIVIDUALS TO THE UNITED STATES FOR A REASONABLE AMOUNT OF TIME, BUT ALSO LESSEN THE ADMINISTRATIVE PROBLEMS OF THE IMMIGRATION AND NATURALIZATION SERVICE IN HAVING TO DEAL WITH CONTINUED YEARLY EXTENSION APPLICATIONS.

WHILE L VISA INDIVIDUALS MAY NOW ENTER THE UNITED STATES ON THREE YEAR VISAS AND BE ADMITTED FOR A THREE YEAR PERIOD OF TIME, OUR TREATY TRADER AND TREATY INVESTOR VISAS WHO ARE ADMITTED ON FOUR EAR VISAS STILL CONTINUE TO BE PLAGUED BY ONE YEAR ADMISSIONS AND THE NECESSITY FOR ANNUAL FILINGS OF EXTENSION APPLICATIONS. WHAT MAKES THIS ALL THE MORE TROUBLING THAT IT IS OUR EXPERIENCE THROUGHOUT THE COUNTRY INDICATE THAT THESE EXTENSION APPLICATIONS BY TREATY TRADERS (E-1) AND TREATY INVESTORS (E-2) CONTINUE TO RECEIVE LIMITED ATTENTION BY THE IMMIGRATION AND NATURALIZATION SERVICE. WE ARE CONSTANTLY BESIEGED BY COMPLAINTS THAT OFTEN THESE EXTENSION APPLICATIONS TAKE MANY MONTHS TO PROCESS, AND ARE OFTEN SIMPLY PRO FORMA APPLICATIONS WHICH COULD BE EASILY ADJUDICATED.

IT SEEMS QUITE APPARENT THAT A FAR BETTER ALTERNATIVE WOULD BE TO ADMIT TREATY TRADER AND TREATY INVESTOR ALIENS FOR THE DURATION OF THEIR VISA, BASED UPON THE AWARENESS THAT SUCH VISAS HAVE GENERALLY BEEN ISSUED AFTER AN EXTENSIVE SCREENING PROCESS TO DETERMINE THAT THE ALIEN IS PROPERLY QUALIFIED. UNDER THE PRESENT SYSTEM, ALIENS MAY QUALIFY FOR E VISA STATUS AS EITHER TREATY TRADERS OR TREATY INVESTORS BY CHANGING THEIR STATUS (IF CURRENTLY IN STATUS) WHILE IN THE UNITED STATES FROM ANOTHER NON-IMMIGRANT VISA TO THE E VISA OR, ALTERNATIVELY, BY PRESENTING THEMSELVES WITH PROPER DOCUMENTATION BEFORE AN AMERICAN CONSUL OVERSEAS.

IT IS DIFFICULT TO JUSTIFY TO INDIVIDUALS ENGAGED IN SUBSTANTIAL AND SIGNIFICANT TRADE WITH THE UNITED STATES (E-1'S) OR TO INDIVIDUALS WHO HAVE MADE SUBSTANTIAL INVESTMENTS IN OUR COUNTRY (E-2'S) THAT THE IMMIGRATION AND NATURALIZATION SERVICE WILL ONLY ADMIT THEM IN ONE YEAR INTERVALS. THIS OBVIOUSLY CANNOT DO MUCH TO INCREASE THE CONFIDENCE OF FOREIGN BUSINESS PEOPLE IN THE LENGTH OF TIME THEY WILL BE PERMITTED TO REMAIN IN OUR COUNTRY TO DIRECT, DEVELOP AND MANAGE THEIR OFTEN SUBSTANTIAL TRADE OPERATIONS OR BUSINESS INVESTMENTS IN OUR COUNTRY.

WE WOULD THEREFORE URGE AND RECOMMEND THAT TREATY TRADER AND TREATY INVESTOR NON-IMMIGRANTS BE ADMITTED INTO THE UNITED STATES FOR THE DURATION OF THEIR VISA. IF THEREFORE SUCH AN ALIEN NON-IMMIGRANT HAS BEEN ISSUED A FOUR YEAR VISA, AS IS CUSTOMARILY THE CASE, UPON AN INITIAL ADJUDICATION OF THEIR APPLICATION, THAT INDIVIDUAL WITH HIS FAMILY SHOULD BE PERMITTED TO ENTER THE UNITED STATES LAWFULLY FOR A FOUR YEAR PERIOD. THERE IS SIMPLY NO JUSTIFICATION OR CONTINUING TO INSIST THAT SUCH INDIVIDUALS PROCESS EXTENSION APPLICATIONS WITH AN IMMIGRATION SERVICE THAT IS UNABLE TO ADJUDICATE THEM PROMPTLY, OR EVEN WITHIN A REASONABLE AMOUNT OF TIME. IT WOULD BE SO MUCH MORE SENSIBLE TO SIMPLY PERMIT TRADERS AND INVESTORS, WITH THEIR IMMEDIATE FAMILIES, TO BE ADMITTED FOR THE DURATION OF THEIR VISA.

ANOTHER SUGGESTION WHICH MIGHT BE OF VALUE TO THE COMMITTEE WOULD BE TO PERMIT AMERICAN CONSULS OVERSEAS TO SHARE THE ABILITY TO ADJUDICATE INITIAL INTRA-COMPANY TRANSFEREE VISAS ALONG WITH THE IMMIGRATION AND NATURALIZATION SERVICE. UNDER THE PRESENT SYSTEM, SUCH NON-IMMIGRANT VISAS MAY ONLY BE INITIALLY ADJUDICATED BY THE IMMIGRATION AND NATURALIZATION SERVICE IN THE UNITED STATES IN THE LOCATION WHERE THE SERVICES WILL EVENTUALLY BE RENDERED. THIS ADJUDICATION PROCESS APPLIES EQUALLY TO THOSE WITHIN THE UNITED STATES SEEKING L VISA STATUS THROUGH CHANGE OF STATUS AS WELL AS TO THOSE WHO ARE OVERSEAS WHO ARE WISHING TO ENTER THIS COUNTRY TO PERFORM EXECUTIVE, MANAGERIAL OR HIGHLY SPECIALISED SKILLS ON BEHALF OF A PARENT, SUBSIDIARY OR AFFILIATE COMPANY OF THEIR PRESENT EMPLOYER. OFTEN, IT IS CLEAR THAT AMERICAN CONSULS OVERSEAS ARE IN A FAR BETTER POSITION TO BE ABLE TO DETERMINE THE VIABILITY AND STRUCTURE OF THE OVERSEAS PARENT COMPANY, AND WOULD THEREFORE BE IN

A FAR BETTER POSITION TO ADJUDICATE SUCH VISA PETITIONS. IN DISCUSSING THIS CONCEPT WITH BOTH IMMIGRATION SERVICE ADJUDICATORS AS WELL AS CONSULAR OFFICERS, I HAVE YET TO FIND ONE INDIVIDUAL WHO EXPRESSED ANY DISCONTENT OR RESERVATION WITH SUCH A PROPOSAL. IT WOULD THEREFORE OFFER A FOREIGN COMPANY-DOING BUSINESS IN THE UNITED STATES AS WELL AS U.S. AFFILIATES OR SUBSIDIARIES OF FOREIGN COMPANIES, THE ALTERNATIVE OF EITHER FILING SUCH APPLICATIONS FOR ADMISSION OF KEY EXECUTIVES OR MANAGERS HERE IN THE UNITED STATES OR DIRECTLY AT THE AMERICAN CONSULAR POST OVERSEAS. IT SHOULD BE BROUGHT TO THE ATTENTION OF THIS COMMITTEE THAT ONE OF THE DIFFICULTIES WE ARE PRESENTLY EXPERIENCING IN IMMIGRATION PRACTICE IS THE INABILITY OF SOME IMMIGRATION SERVICE OFFICES TO PROMPTLY ADJUDICATE L VISA PETITIONS. IT SHOULD THEREFORE BE EMPHASIZED THAT THE INTRA-COMPANY TRANSFEREE VISA CATEGORY WAS DESIGNED BY CONGRESS TO PROVIDE A REASONABLY FLEXIBLE AND EXPEDITIOUS WAY OF TRANSFERRING TO THE UNITED STATES IMPORTANT EMPLOYEES WHO ARE REQUIRED IN THIS COUNTRY TO PERFORM ESSENTIAL SERVICES. THEREFORE THE VERY PURPOSE OF THE VISA IS BEING HAMPERED BY ADMINISTRATIVE DELAY, WHICH IS THE VERY AILMENT INDEED THAT THE VISA WAS DESIGNED TO CURE. WE WOULD THEREFORE RECOMMEND THAT INTRA-COMPANY TRANSFEREE NON-IMMIGRANT L VISAS BE INITIALLY ADJUDICATED EITHER THROUGH THE IMMIGRATION AND NATURALIZATION SERVICE OR DIRECTLY AT AMERICAN CONSULAR POSTS OVERSEAS.

OF COURSE, THE GREAT DIFFICULTY IN SUGGESTING THAT SUCH NON-IMMIGRANT VISAS BE ADJUDICATED DIRECTLY OVERSEAS IS THAT OUR CURRENT LAW DOES NOT PERMIT ANY TRUE APPEAL OF CONSULAR DECISIONS. ONE OF THE MAJOR REASONS THEREFORE THAT IMMIGRATION PRACTITIONERS WOULD PREFER TO FILE ALL APPLICATIONS THROUGH THE IMMIGRATION AND NATURALIZATION SERVICE IS THAT ITS PRESENT SYSTEM DOES PERMIT APPEALS TO BE FILED BOTH AT THE LOCAL LEVEL, AT THE REGIONAL LEVEL, THROUGH THE BOARD OF IMMIGRATION APPEALS AND EVEN EVENTUALLY, IF NECESSARY, THROUGH OUR FEDERAL COURT SYSTEM. I AM CERTAIN THAT OTHER SPEAKERS AND COMMENTATORS HAVE SHARED THEIR VIEWS WITH YOU ON THE NECESSITY AS WELL AS DESIRABILITY FOR PROVIDING SOME MEANINGFUL REVIEWABILITY OF CONSULAR DECISIONS AND DISCRETION. I NEED NOT THEREFORE DISCUSS ITS MERITS WITH YOU AT THIS TIME. WHAT IS HOWEVER IMPORTANT, IS THAT I BRING TO YOUR ATTENTION THAT I HAVE DONE A CONSIDERABLE AMOUNT OF CONSULAR WORK AT A NUMBER OF POSTS IN EUROPE AND IN ASIA OVER THE LAST FIVE YEARS THAT I HAVE BEEN PRACTICING IMMIGRATION LAW. I HAVE FOUND MOST, IF NOT THE GREAT MAJORITY, OF OUR CONSULAR POSTS TO BE STAFFED BY HIGHLY ABLE, DEDICATED AND KNOWLEDGEABLE CONSULAR OFFICERS. I FIND THAT THE SERVICES THEY PROVIDE TO BOTH REPRESENTED AND INREPRESENTED ALIENS IS FOR THE MOST PART WORTHY OF PRAISE AND CERTAINLY NOT CRITICISM. I DO, HOWEVER, OCCASIONALLY IDENTIFY AN INDIVIDUAL CONSULAR OFFICER, OR AN INDIVIDUAL CONSULAR POST, WHICH SEEMS TO TAKE ITS WORK RESPONSIBILITY IN A DIFFERENT LIGHT. AMERICAN CONSULAR OFFICES SHOULD NOT AND CANNOT BE JUDGED BY ANY HIGHER STANDARD OF PERFECTION THAN OTHER HUMAN BEINGS. WE ALL MAKE OUR MISTAKES; PARTICULARLY IN MOMENTS OF CRISIS AND PRESSURE. CERTAINLY; CONSULAR OFFICES ARE NO LESS LIKELY TO ERROR THAN YOU AS MEMBERS OF CONGRESS OR US AS IMMIGRATION

LAWYERS. WE ARE ALL HUMAN AND ARE ALL SUBJECT TO THE ERRORS OF HUMAN BEHAVIOUR. THERE CLEARLY DOES NOT SEEM TO BE ANY JUSTIFIABLE REASON WHY CONSULAR OFFICES SHOULD BE EXEMPT FROM THE BASIC REVIEWABILITY OF ALL OTHER GOVERNMENT AGENCIES. WHO AMONG US COULD HONESTLY TAKE THE POSITION THAT OUR CONSULAR JFFICES ARE UNIFORMLY AND WITHOUT EXCEPTION PERFECT IN THEIR DECISION MAKING AND UNABLE TO ERROR? IT MUST BE REMEMBERED THAT CONSULAR OFFICES ARE SOMETIMES MAKING LIFE AND DEATH DECISIONS AND ARE OFTEN MAKING DECISIONS WHICH ARE IMMENSELY IMPORTANT AND CRITICAL TO THE FUTURE OF HUMAN BEINGS.

IT MUST BE BORNE IN MIND BY ALL OF US THAT CONSULAR OFFICES ARE DEALING ON A DAILY BASIS WITH ESSENTIALLY THE LIVES OF OTHER HUMAN BEINGS WHO HAVE DETERMINED, FOR BETTER OR WORSE, THAT THEY WISH TO COME TO THIS COUNTRY WITH THEIR FAMILIES EITHER TEMPORARILY TO PERFORM TEMPORARY SERVICES, OR PERMANENTLY TO SPEND THE REST OF THEIR LIVES BUILDING A FUTURE FOR THEMSELVES AND THEIR FAMILIES. WHEN WE DO UNDERSTAND THE TRUE NATURE OF WHAT WE ARE DOING, THEN I THINK WE WILL TRULY UNDERSTAND THE NECESSITY FOR ALL OF OUR ACTIONS AND BEHAVIOUR TO BE APPEALABLE AND SUBJECT TO REVIEW.

IN OCTOBER OF 1980 AN ARTICLE APPEARED IN THE NEW YORK TIMES INDICATING THAT THE UNITED STATES HAD "QUITETLY" TIGHTENED ITS PROCEDURES FOR GRANTING VISAS TO JAPANESE CITIZENS WHO WERE BEING SENT BY THEIR COMPANIES TO WORK IN THE VERY NUMEROUS JAPANESE-OWNED BUSINESSES IN OUR COUNTRY. STATE DEPARTMENT OFFICIALS WERE QUOTED AS INDICATING THAT THE ACTION DID NOT REPRESENT ANY CHANGE IN POLICY, BUT WAS RATHER INTENDED TO "CORRECT ABUSES" RESULTING FROM EARLIER LAXITY IN ADMINISTRATING THE VISA PROCEDURES.

I WAS FORTUNATE ENOUGH TO HAVE BEEN INVITED TO LECTURE IN JAPAN, BOTH IN OCTOBER 1980 AND THIS PAST OCTOBER AS A GUEST OF THE GOVERNMENT OF JAPAN. I PARTICIPATED IN A SEMINAR COMPARING THE IMMIGRATION LAWS OF JAPAN WITH THOSE OF THE UNITED STATES AND CANADA. DURING MY TWO TRIPS TO JAPAN, WHICH TOTALLED FIVE WEEKS DURING THE LAST FOURTEEN MONTHS, I SPENT A CONSIDERABLE AMOUNT OF TIME MEETING WITH GOVERNMENT OFFICIALS OF BOTH JAPAN AND THE UNITED STATES, AS WELL AS BUSINESS LEADERS OF BOTH JAPANESE COMPANIES AS WELL AS AMERICAN COMPANIES DOING BUSINESS IN JAPAN.

IT SHOULD BE MADE CLEAR TO THE MEMBERS OF THIS COMMITTEE THAT THE ESSENTIAL "VISA PROBLEM" FOR JAPANESE IS VIEWED BY THE JAPANESE AS INDICATIVE OF OUR REACTION TO THE PERCEIVED ASSAULT ON THE AMERICAN ECONOMY BY JAPANESE PRODUCTS AND COMPANIES.

IT IS CLEAR THAT TO THE JAPANESE WE HAVE BEGUN TO USE OUR VISA REGULATIONS AS A MEANS AND TOOL TO DEVELOP OUR FOREIGN POLICY AS WELL AS OUR ECONOMIC STRUCTURE AND DEVELOPMENT.

THE VIEW OF THE STATE DEPARTMENT CLEARLY APPEARS TO BE THAT THERE IS NO CONNECTION OF ANY KIND BETWEEN A REVIEW OR CHANGE IN THE ISSUANCE OF VISAS TO JAPANESE BUSINESS PEOPLE AND TRADE ISSUES,

AND THAT THE STATE DEPARTMENT IF MERELY "RESPONDING TO AN ACCUMULATION OF MARGINAL E VISA CASES". THE JAPANESE, HOWEVER, HAVE NOT BOUGHT THAT ARGUMENT AND, IN MY OPINION, CONTINUE TO BELIEVE THAT AS THE ECONOMIC IMBALANCE OF TRADE PERSISTS BETWEEN OUR TWO COUNTRIES, WE ARE FOR CLEARLY INTENTIONAL AND SELF-MOTIVATED REASONS, SEEKING TO MAKE IT MORE FOR JAPANESE COMPANIES TO ENTER OR CONTINUE TO DO BUSINESS IN THE UNITED STATES.

THE CENTRAL E VISA PROBLEM BETWEEN JAPAN AND THE UNITED STATES, IN MY OPINION, REALLY DEALS WITH TWO KEY ISSUES. THE FIRST IS THE ISSUE OF DIRECT TRADE. THE POSITION OF THE STATE DEPARTMENT IS THAT DIRECT TRADE IS CRITICAL TO BEING ABLE TO QUALIFY FOR AN E-1 TREATY TRADER VISA. THIS INSISTENCE ON A SHOWING OF DIRECT TRADE IS MEANT TO REFLECT THE UNHAPPINESS OF THE STATE DEPARTMENT IN CONTINUING TO GRANT TREATY TRADER E-1 VISAS TO EMPLOYEES OF JAPANESE TRADING COMPANIES. IT IS OBVIOUS TO ALL OF US THAT THE TRADING COMPANY CONCEPT IS CLEARLY UNIQUE TO THE JAPANESE ECONOMY AND ECONOMIC WAY OF DOING BUSINESS OVERSEAS.

UP UNTIL RECENTLY, IF A JAPANESE MANUFACTURING COMPANY WERE TO SELL ITS GOODS AND PRODUCTS TO A JAPANESE TRADING COMPANY AND THAT TRADING COMPANY WERE IN TURN TO DISTRIBUTE AND SELL ITS PRODUCTS TO A U.S. BASED COMPANY, BOTH THE JAPANESE MANUFACTURING COMPANY AND THE JAPANESE TRADING COMPANY WERE OFTEN ABLE TO SECURE E-1 TREATY TRADER VISAS FOR THEIR EMPLOYEES WHO WERE SEEKING TO ENTER THE UNITED STATES TEMPORARILY TO ASSIST IN THE MARKETING OR DISTRIBUTION, OR AFTER-SALES SERVICING OF THE PRODUCTS.

THE CURRENT POSITION OF THE STATE DEPARTMENT IS THAT WHEN THE MANUFACTURING COMPANY IN JAPAN HAS SOLD ITS GOODS TO THE TRADING COMPANY IN JAPAN, THE MANUFACTURING COMPANY ~~HAS~~ CUT OFF ITS OWNERSHIP OR TITLE TO THE GOODS AND IS THEREFORE INELIGIBLE FOR A RELATED EMPLOYEE VISA. HAD THE MANUFACTURING COMPANY MERELY CONSIGNED ITS GOODS TO THE TRADING COMPANY FOR THE PURPOSE OF HANDLING AND FACILITATING THE ONWARD SHIPMENT OF THE GOODS TO THE UNITED STATES, THEN TITLE AND OWNERSHIP WOULD REMAIN IN THE INITIAL MANUFACTURING COMPANY AND THAT COMPANY WOULD INDEED BE ABLE TO TRANSFER ITS INDIVIDUALS TO THE UNITED STATES AS TREATY TRADER EMPLOYEES. IT IS THEREFORE THE POSITION OF THE STATE DEPARTMENT THAT THE SALE OF THE GOODS BETWEEN THE MANUFACTURING COMPANY AND THE TRADING COMPANY HAS NOW DIVESTED THE INITIAL MANUFACTURING COMPANY OF ITS ELIGIBILITY FOR E-1 VISAS. TO THE JAPANESE THIS REPRESENTS A CLEAR CHANGE OF POLICY WHICH IS TO MANY UNJUSTIFIED.

IT IS INCUMBENT ON US TO REMEMBER HOWEVER THAT THE TRADING COMPANY WHICH IS ENGAGED IN DIRECT TRADE WITH THE U.S. COMPANY MIGHT INDEED CONTINUE TO BE ELIGIBLE FOR E-1 EMPLOYEE VISAS, AND THAT THE ORIGINAL MANUFACTURING COMPANY MIGHT INDEED SIMPLY BE USING THE TRADING COMPANY TO TRANSFER OR SELL ITS PRODUCTS TO A U.S. BASED SUBSIDIARY OR AFFILIATE WHICH WOULD THEREFORE MAKE THE ORIGINAL MANUFACTURING COMPANY ELIGIBLE FOR L-1 THREE YEAR VISAS.

THE SECOND MAJOR PROBLEM AREA IN JAPANESE E VISAS CONCERNS ITSELF WITH THE ISSUE OF WHETHER OR NOT THE INDIVIDUAL EMPLOYEE SEEKING TO COME TO THE UNITED STATES ON A TREATY TRADER VISA IS ESSENTIAL TO THE OPERATION OF THE U.S. COMPANY. THERE APPEAR TO BE A NUMBER OF INSTANCES IN THE PAST WHEN LOW LEVEL NON-ESSENTIAL EMPLOYEES OF JAPANESE COMPANIES WERE NEVERTHELESS BEING ISSUED E-1 VISAS. IT IS UNFAIR AND INDEED UNFORTUNATE THAT THE PRESS REPORTS AND DISCUSSION SEEM TO SUGGEST THAT THIS IS AN EXAMPLE OF A "VISA ABUSE" BY THE JAPANESE.

BASED ON MY OWN READING OF THE SITUATION, I WOULD RATHER INDICATE IT TO BE BASED UPON A LAXITY ON THE PART OF SOME CONSULAR OFFICERS WHO DID NOT THEMSELVES FIRMLY DETERMINE THEIR OWN RULES FOR E-1 EMPLOYEE ADJUDICATION, AS WELL AS THE FACT THAT THE STATE DEPARTMENT HAD NOT FIRMLY GUIDED THEM ON E-1 EMPLOYEE ADJUDICATION. A FURTHER ENHANCING FACTOR IN THE CONFUSION WAS CERTAINLY THAT THE JAPANESE COMPANIES WERE TO SOME EXTENT TAKING ADVANTAGE OF THIS CONFUSION BY SOMETIMES FILING INFLATED JOB DESCRIPTIONS THAT WOULD BE ACCOMPLISHED BY THEIR EMPLOYEES WHILE IN THE UNITED STATES, AND INDICATING THAT SUCH EMPLOYEES WERE INVOLVED IN MUCH MORE ESSENTIAL WORK THAN THEY ACTUALLY WERE DOING OR WERE GOING TO DO.

AS A RESULT, THE STATE DEPARTMENT HAS NOW SUGGESTED THAT THERE IS A NECESSITY FOR THE JAPANESE COMPANY TO CLEARLY SHOW THAT THE PRIMARY FUNCTION OF THE EMPLOYEE WILL BE INHERENTLY EXECUTIVE OR SUPERVISORY IN NATURE AND THAT IT WILL ENTAIL SUBSTANTIAL INVOLVEMENT IN SUBSTANTIVE DAY-TO-DAY WORK, AND WILL REQUIRE PRIMARILY MANAGEMENT SKILLS. THE KEY ISSUE THEREFORE IS WHETHER OR NOT THE EMPLOYEE WILL SATISFY THE ROLE OF BEING ESSENTIAL TO THE U.S. OPERATION.

IT IS CLEAR THEREFORE THAT OUR CONSULAR OFFICES HAD TO SOME EXTENT BEEN LULLED OVER THE YEARS BY THE ADMIRABLE VISA RECORD OF OUR JAPANESE BUSINESS COMMUNITY, AND THAT THEY THEREFORE PERHAPS OVEREXTENDED THEIR GENEROSITY AND ISSUED VISAS IN MARGINAL CASES. IT IS ALSO CLEAR THAT THE JAPANESE THEMSELVES WERE TO AN EXTENT, TAKING ADVANTAGE OF THAT GENEROSITY, BY SUGGESTING ESSENTIAL JOB TITLES OR JOB DUTIES FOR EMPLOYEES IN OFTEN LOW LEVEL, NON-ESSENTIAL POSITIONS. WHAT WAS HOWEVER ALSO CLEAR IS THAT THERE WAS NO "VISA ABUSE" AND THAT IT WAS UNFAIR TO SUGGEST THAT THE E VISAS PROBLEM PERMEATED JUST THE JAPANESE BUSINESS COMMUNITY.

SUBSEQUENT COMMUNICATIONS FROM THE STATE DEPARTMENT WOULD SEEM TO REFLECT THE FACT THAT THERE WERE E VISAS PROBLEMS NOT ONLY IN JAPAN, BUT IN DENMARK, FINLAND AND GERMANY. IN ADDITION, MANY CONSULAR POSTS THROUGHOUT EUROPE WERE OFTEN REQUESTING ADVISORY OPINIONS FROM THE STATE DEPARTMENT ON E VISA ADJUDICATION AS A RESULT OF THE INCREASED COMPLEXITY OF INTERNATIONAL TRADE, AS WELL AS THE RATHER UNCLEAR AND IMPRECISE LANGUAGE OF THE FOREIGN AFFAIRS MANUAL WHICH SERVES AS THE GUIDING BIBLE OF CONSULAR DECISION-MAKING.

FORTUNATELY, THE STATE DEPARTMENT HAS RECENTLY RESPONDED TO AN ACCUMULATION OF ISSUES ON TREATY TRADER ADJUDICATION BY PREPARING AND SENDING OUT A CABLE TO ALL POSTS IN THE WORLD DEALING WITH E-1 VISAS ISSUES. IT IS TO BE HOPED AND ANTICIPATED THAT THIS WILL LEAD TO UNIFORM ADJUDICATION OF E-1 VISAS CASES FOR NATIONALS OF ALL COUNTRIES, AND NOT JUST THOSE OF JAPAN.

AN ADDITONAL AND STILL COMPLEX AND DIFFICULT ISSUE IN E-1 VISA ADJUDICATION INVOLVES THE ISSUE OF WHAT IS MEANT BY "TRADE". ONE OF THE ESSENTIAL ELEMENTS TOWARDS DOCUMENTING AN E-1 VISA APPLICATION IS TO VERIFY THAT THERE HAS BEEN A SUBSTANTIAL AMOUNT OF TRADE CURRENTLY ONGOING BETWEEN THE UNITED STATES BASED COMPANY AND BUSINESS IN THE COUNTRY OF NATIONALITY. THE POSITION OF THE STATE DEPARTMENT AT THE PRESENT TIME, APPEARS TO BE THAT "TRADE" REFLECTS AN EXCHANGE OF GOODS AND MONIES IN THE FLOW INTERNATIONAL COMMERCE. IT WOULD SEEM TO FURTHER BE THE POSITION OF THE STATE DEPARTMENT THAT UNLESS ONE CAN SHOW SUBSTANTIAL TRADE, AS DEFINED ABOVE, THEIR EMPLOYEES WOULD NOT BE ELIBIBLE. FOR E-1 VISA ADJUDICATION. WHAT IS HOWEVER APPARENTLY NOT BEING DEALT WITH IS THE TRANSFER OF TECHNICAL AND/OR TECHNOLOGICAL ADVICE OR ASSISTANCE. IS IT NOT POSSIBLE FOR THE COSTS OF SUCH ADVICE, CONSULTANCY OR ASSISTANCE TO VALUED AND CONSTRUED AS INTERNATIONAL TRADE? IT WOULD APPEAR THAT THIS ISSUE HAS BEEN DETERMINED BY THE IMMIGRATION AND NATURALIZATION SERVICE TO NOT REFLECT A TRUE TRANSFER OF "TRADE".

THERE APPEAR TO BE MANY INTERNATIONAL COMPANIES NOW INVOLVED IN THIS EXCHANGE OF TECHNOLOGY OR CONSULTANCY WITH COMPANIES IN THE UNITED STATES, AND ONE WOULD HOPE AND EXPECT THAT IN VIEW OF TECHNOLOGICAL CHANGES IN THE WAY THE WORLD DOES BUSINESS THAT OUR GOVERNMENT WILL NOW REDEFINE ITS TRADITIONAL CONCEPTS OF TRADE TO REFLECT SUCH CHANGES IN OUR INTERNATIONAL ECONOMY.

IN CONCLUSION, ON THE CURRENT E VISA PROBLEMS AS VIEWED BOTH IN JAPAN AND IN MANY OF THE EUROPEAN POSTS, IT MUST BE RECOGNISED SPECIFICALLY WITH REFERENCE TO JAPAN THAT THE E-1 VISA HAS BECOME A PRESTIGE VISA. IF WE ARE GOING TO SUDDENLY CHANGE THE RULES AND AT THE SAME TIME WISH TO KEEP A GOOD BUSINESS RELATIONSHIP WITH OUR JAPANESE FRIENDS AND COLLEAGUES, IT IS CLEAR THAT WE WILL HAVE TO MAKE CLEAR TO THEM THAT THESE CHANGES DO NOT REFLECT AN EFFORT TO IMPOSE RESTRICTIONS ON THEIR ECONOMIC DEALINGS IN THIS COUNTRY, NOR ARE THEY REFLECTIVE OF ANY KIND OF "VISA ABUSE". WHAT WE INDEED SHOULD DO, RATHER, IS TO CLEARLY DEFINE AND PROJECT E VISA PROBLEMS AND SOLUTIONS AND ENSURE THEIR ADJUDICATION UNIFORMLY AT ALL AMERICAN CONSULAR POSTS THROUGHOUT THE WORLD. WE NEED TO BETTER INFORM THE FOREIGN BUSINESS COMMUNITY OF ALTERNATIVE VISAS; AS OFTEN THE L-1 INTRA-COMPANY TRANSFEREE IS UNDER USED AND UNDERVALUED BY COMPANIES WHICH HAVE TRADITIONALLY BEEN USING E VISAS AND NOW FIND THAT THEY ARE UNABLE TO SECURE THEM.

IN CONCLUSION, I WOULD SUGGEST THAT THERE ARE PROBLEMS IN THE ADJUDICATION OF BUSINESS VISAS, BOTH FOR THOSE SEEKING TO ENTER

THE UNITED STATES PERMANENTLY, AS WELL AS FOR COMPANIES OR INDIVIDUALS WILLING TO DO BUSINESS IN THE UNITED STATES TEMPORARILY. WE MUST DEVELOP A REALISTIC AND SENSIBLE APPROACH TO FOREIGN INVESTORS WHO WISH TO MAKE SUBSTANTIAL INVESTMENTS IN OUR ECONOMY AND IN OUR COUNTRY. I BELIEVE THAT A SYSTEM AS OUTLINED ABOVE TO PROVIDE PERMANENT RESIDENCE TO THOSE INDIVIDUALS WILLING TO MAKED SUBSTANTIAL INVESTMENTS WHICH WILL HAVE A POSITIVE EFFECT IN COMMUNITIES IN NEED OF SUCH FUNDS, IS WORTH OUR CONSIDERATION.

I FUTHER BELIEVE THAT SOME VIABLE MEANS SHOULD BE DEVELOPED TO ENABLE WEALTHY RETIRED PEOPLE FROM THROUGHOUT THE WORLD TO HAVE A VIABLE ENTRY ROUTE INTO THIS COUNTRY, WHERE THEIR PRESENCE CAN ONLY ENHANCE OUR ECONOMIC AND SOCIAL LIVELIHOOD. ON THE NON-IMMIGRANT VISA SIDE, IT IS CLEAR THAT THERE IS A PROBLEM BOTH IN E AND L VISA ADJUDICATION WHICH CAN BE CORRECTED AND DEALT WITH BY THE MEMBERS OF THIS COMMITTEE.

IT HAS BEEN A SINCERE PLEASURE FOR ME TO HAVE BEEN ABLE TO APPEAR BEFORE YOU TODAY, AND I WOULD WELCOME YOUR QUESTIONS AT THIS TIME AS WELL AS THE OPPORTUNITY TO FURTHER DEVELOP OUR CHANNEL OF COMMUNICATION IN THE FUTURE.

THANK YOU.

EXHIBIT A

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YOUR REF OUR REF

26th November 1981

PHONES

GENERAL
242 7289
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ACTIONS
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PROPERTY
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DIVORCE
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IMMIGRATION RULES FOR INVESTORS IN U.K.

INTRODUCTION

There has been a substantial tightening up of the requirements for this category of immigrant. Rules prior to 1980 only required a bona fide intention to establish a business in U.K., together with proof of "adequate" resources. No criteria were published and each case was considered on its merits. The spirit of the Rules was substantially abused through the purchase of "off the shelf" companies.

CURRENT RULES - SINCE 1980

These are dated 20th February 1980 and are made pursuant to s.3(2) of The Immigration Act 1971.

The criteria are clealy set out in Rules 35, 36 and 37 (copy herewith).

BRIEFLY:-

1. A current "entry clearance" from a U.K. Immigration Officer must be obtained overseas from the U.K. Consul before arriving in U.K. Clearance must relate to the proposed establishment of a business.

2. £100,000 sterling (approximately $190,000) must be invested in the business which must have a genuine need for the investor's services and investment (i.e. it must not be a disguised form of employment for which a work permit (similar to a U.S. Labour Certificate) would normally be required).

3. The funds must be available and disposable in the U.K. Money held in blocked accounts in countries where currency restrictions apply would be of no value when making the application, even though the ways of spiriting such money to London are well known.

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4. The money must be the investor's own money and the investment must be propprtional to the interest being purchased.

5. There must be a full time involvement in the running of the business.

6. Merely being able financially to come within the rules is not sufficient. There must be evidence to show that the investment will create new, paid, full time employment in the business for persons already settled in the U.K.

7. Where it is intended to join an existing business, as opposed to establishing a new business, it must be shown that the profits will be sufficient to maintain and accomodate an immigrant and his dependents. Audited accounts of the business in previous years must be produced to the Entry Clearance Officer in order to establish the precise financial position together with a written statement of the terms on which he is to enter or take over the business.

There are no regional quotas for this or any other immigration category. However, only very wealthy people will be able to take advantage of this section and such people are well able to look after themselves and clear the immigration hurdles.

E.E.C. NATIONALS

Nationals from the European Economic Community do not have to meet the strict financial criteria and the rules are considerably simplified with no minimum financial requirements.

If any further information is required, our Partner Edward Wilde will be happy to assist. Phone London 01 405 5225. Telex: 22327 Ambros G.

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20th November 1981

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GENERAL
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ACTIONS
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E. WILDE
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PROPERTY
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DIVORCE
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TRUSTS
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VAT No.
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TELEX
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AMBROS G

IMMIGRANT INVESTORS IN U.K.

U.K. IMMIGRATION RULES 1980

Businessmen and self-employed persons

35. A passenger seeking admission for the purpose of establishing himself in the United Kingdom in business or in self-employment, whether on his own account or in partnership, must hold a current entry clearance issued for that purpose. A passenger who has obtained such an entry clearance should be admitted, subject to paragraph 13, for a period not exceeding 12 months with a condition restricting his freedom to take employment. For an applicant to obtain an entry clearance for this purpose he will need to satisfy the requirements of either paragraph 36 or paragraph 37. In addition he will need to show that he will be bringing money of his own to put into the business; that his level of financial investment will be proportional to his interest in the business; that he will be able to bear his share of the liabilities; that he will be occupied full-time in the running of the business; and that there is a genuine need for his services and investment. In no case should the amount of money to be invested by the applicant be less than £100,000 and evidence that this amount or more is under his control and disposable in the United Kingdom must be produced.

36. Where the applicant intends to take over, or join as a partner, an existing business, he will need, in addition to meeting the requirements of the preceding paragraph, to show that his share of the profits will be sufficient to maintain and accommodate him and his dependants. Audited accounts of the business for previous years must be produced to the entry clearance officer in order to establish the precise financial position, together with a written statement of the terms on which he is to enter or take over the business. There must be evidence to show that his services and investment will create new, paid, full-time employment in the business for persons already settled here. An entry clearance is to be refused if an applicant cannot satisfy all the relevant requirements of this or the preceding paragraph or where it appears that the proposed partnership or directorship amounts to disguised employment or where it seems likely that, to obtain a livelihood, the applicant will have to supplement his business activities by employment of any kind or by recourse to public funds.

37. If the applicant wishes to establish a new business in the United Kingdom on his own account or to be self-employed he will need to meet the requirements of paragraph 35 and satisfy the entry clearance officer that he will be bringing into the country sufficient funds of his own to establish an enterprise that can realistically be expected to maintain and accommodate him and any dependants without recourse to employment of any kind (other than his self-employment) or to public funds. He will need to show in addition that the business will provide new, paid, full-time employment in the business for persons already settled here. An entry clearance is to be refused if an applicant cannot satisfy all the requirements of this paragraph and of paragraph 35.

EXHIBIT B

RICHARD S. GOLDSTEIN

A. TREATY TRADER (E-1) VISA:

1. REQUIRES A TREATY OF COMMERCE & NAVIGATION [40 TREATIES EXISTING].
2. INDIVIDUAL MUST BE NATIONAL OF TREATY COUNTRY (BY BIRTH OR NATURALIZATION).
3. BUSINESS ENTERPRISE MUST BE OWNED 51% OR MORE BY NATIONALS OF TREATY COUNTRY.
4. 51% OR MORE OF TRADE MUST BE BETWEEN U.S. AND COUNTRY OF APPLICANT'S NATIONALITY.
5. THERE MUST BE A "SUBSTANTIAL" CURRENT AND NOT POTENTIAL AMOUNT OF TRADE AS INDICATED NOT BY MONETARY AMOUNT, BUT BY VOLUME [SHOW PROOF OF NUMEROUS TRANSACTIONS].
6. INDIVIDUAL OR EMPLOYEE MUST BE EXECUTIVE OR MANAGERIAL, OR A HIGHLY TRAINED AND SPECIALLY QUALIFIED TECHNICIAN.

B. TREATY INVESTOR (E-2) VISA:

1. REQUIRES A TREATY OF COMMERCE & NAVIGATION [30 TREATIES EXISTING].
2. INDIVIDUAL MUST BE A NATIONAL OF TREATY COUNTRY (BY BIRTH OR NATURALIZATION).
3. BUSINESS ENTERPRISE MUST BE OWNED 51% OR MORE BY NATIONALS OF TREATY COUNTRY.
4. BUSINESS ENTERPRISE MUST BE EXISTING OR IN ACTIVE PROCESS OF FORMATION.
5. MUST SHOW A "SUBSTANTIAL" INVESTMENT, AS INDICATED BY TYPE OF INVESTMENT.
6. APPLICANT MUST BE ENTERING U.S. TO "DEVELOP AND DIRECT" BUSINESS ENTERPRISE, HENCE INVESTOR REQUIRES A CONTROLLING INTEREST IN BUSINESS. EMPLOYEES MUST BE EXECUTIVE OR MANAGERIAL OR THOSE IN A "RESPONSIBLE CAPACITY."

EXHIBIT · C

IN PERSPECTIVE

US Visas: A guide through the maze

As more and more foreign companies and individuals invest in the US and American companies seek to "internationalize" their managerial ranks by exposing promising foreign executives to their headquarters operations, they are finding that American immigration law can pose significant obstacles. Indeed, it makes surprisingly few concessions to foreign investors and is in many ways far more restrictive than the law in other countries, such as Britain and Canada. The US has no viable provision, for example, to assist wealthy foreigners fleeing simply to retire to this country and live off their investments.

Companies frequently become discouraged by the complexity of entry laws that apply to executives, supervisors, and highly trained personnel with specialized knowledge. They complain about the endless delays and cumbersome procedures involved in securing appropriate visas. Often their complaints are justified, but sometimes they result from selecting the wrong visa category or filing essential documents incomplete.

Many foreign investors ask about permanent-resident status based on an investment of $40,000 or more in a business in the US. Entering the US on this basis – under what is called a nonpreference visa – used to be possible and, in theory, still is. But since 1978 the total number of immigrant visas the US grants each year has been exhausted by the six "preference" categories for permanent residence. Nonpreference visas have simply become unavailable, and unless the law is changed they will probably remain so indefinitely.

This article was written for WBW *by Richard S. Goldstein, an attorney specializing in US immigration and visa law. Goldstein is chairman of the Committee on Immigration and Nationality Laws of the International Bar Association and editor of the* Transnational Immigration Law Reporter. *He has offices in New York and London.*

A more viable alternative for the foreign investor seeking permanent residence is to put his funds into a new or preexisting enterprise in the US and have that business sponsor him, based on a "labor certification." Under this procedure the employer essentially has to demonstrate to the US Labor Department that it is unable to find an American able, willing, qualified, and available to fill the position it has offered the foreigner. If the Labor Department concurs, it will issue a labor certification to the foreigner, who then has his employer file either a third or sixth preference visa petition leading to permanent-residence status.

Another possibility – sometimes overlooked – is to determine whether the alien-investor is qualified to enter the US through one of the preference categories available to relatives either of US citizens or of lawful permanent residents. If so, a relative visa petition might obtain the desired result more easily than any other approach.

Companies bemoan the endless delays in getting visas for their personnel

Where permanent-resident status is not sought and the alien is to be based in the US only temporarily, the choice of the appropriate nonimmigrant visa is crucial to avoid delay. While every case must be treated individually, often with professional guidance, familiarity with the available visa categories can help both the applicant and the corporation. The main options are:

● L-1 Intra-Company Transferee Visa: This is one of the most useful visas for multinational companies. It was created in 1970 to facilitate the temporary transfer of key personnel with management, professional, or specialized skills. The visa is [redacted] now available for initial three year period.

On a recent lecture tour in Japan, author Goldstein (left) met with US Consul General Ronald Gaidus

The criteria for eligibility are that the alien must have filled an executive, managerial, or specialized-knowledge position for at least the year immediately preceding the filing of the L-1 petition; he must be transferred to an affiliate or subsidiary of the same company for which he was working abroad in an executive, managerial, or specialized-knowledge capacity; the US parent, subsidiary, or affiliate to which he is transferred must be a viable operation and not merely a "paper" company; and the company should occupy premises (with a lease agreement) as well as file complete documentation to substantiate the relationship between the two companies.

A petition must first be filed with the US Immigration Service in the American city where the foreigner will work. Approval is then sent overseas to permit a US consul to issue the visa. If the person is already in the US on another nonimmigrant visa, a change-of-status application is statutorily feasible.

● E-1 Treaty Trader and E-2 Treaty Investor Visas: In many ways these are the most desirable and flexible of all nonimmigrant business visas. They are generally issued promptly at US consular posts upon presentation of appropriate documentation. They usually provide for a four-year working visa, may be revalidated or extended indefinitely, and permit travel outside the US. They do not require an individual to retain a residence overseas (unlike other nonimmigrant visas)

World Business Weekly, February 9, 1981

but merely to declare his intention to depart at the end of his stay.

Not all foreigners are, however, eligible for these treaty visas. The applicant must be a national of one of the approximately 40 countries with which the US has E-1 treaties or the 30 with E-2 treaties. Eligible E-1 and E-2 countries include Britain, West Germany, Belgium, France, Switzerland, and Italy.

Under an E-1 Treaty Trader Visa, a company must generally show that an applicant who is a national of a treaty country seeks to enter the US to facilitate trade in a managerial or executive capacity. The company in the US must be at least 51% controlled by nationals of the treaty country, and at least 51% of its trade must be with the treaty country of the applicant. In addition, the company must show proof of numerous transactions (which can involve either products or services) to demonstrate that it already has a "substantial" trading volume.

Under an E-2 Treaty Investor Visa, the visa applicant of a treaty country must show that he has made a "substantial" investment (generally, more than $100,000) in an enterprise in the US. The business should be owned at least 51% by the applicant, and he must be coming to the US to develop and direct it. He thus must legally control the enterprise. Employees of the foreign investor in a responsible capacity from the same treaty country are also eligible for E-2 visas.

The investor must have ample additional funds, and the investment should not be in a marginal enterprise designed solely for the purpose of earning a living for the applicant. The investment funds are to be used to develop the business and to expand employment and create jobs for American citizens or lawful permanent residents. Like the E-1, this is a four-year visa that can be renewed indefinitely.

For big investors, the E-2 visa offers a unique advantage. The alien can continue to live outside the US and enter the country only when necessary, perhaps avoiding US tax liability while still enjoying a US base of operations.

- B-1 Visitor for Business Visa: When appropriate, this visa is a particularly useful and flexible entry category and is usually obtainable in one day from a US consular officer.

The US is tightening its procedures for granting certain business visas

Aliens using a B-1 visa may *not* be involved in gainful employment in the US, but they may engage in non-competitive temporary activities, such as negotiating contracts, consulting with business associates, participating in conventions or conferences, or undertaking independent research. The B-1 applicant must maintain a residence in a foreign country he has no intention of abandoning.

- H-1 Visa: This is available to aliens of distinguished merit and ability who want to enter the US to perform services of an exceptional nature that require a highly qualified individual. Under the precedent set by *Matter of Essex Cryogenics* (which was recently reaffirmed in *Matter of General Atomic Co.*), a member of the professions (generally holding a master's degree or the equivalent) would qualify for an H-1 one-year working visa. Like the L-1, but unlike the E-1 or E-2, this visa initially requires the approval of a petition filed with the Immigration Service in the US. The H-1 visa may be renewed for several years.

As far as E-1 and E-2 visas are concerned, recent press reports have indicated that the US is "quietly tightening its procedures" for granting them to Japanese nationals. The State Department has emphasized that this action does not represent any "change in policy" and is intended to "correct abuses" resulting from earlier laxity in issuing these visas.

The department appears to have two main concerns. First, it believes that employees of firms that trade with the US via trading companies (a traditional Japanese method of doing business) should generally apply for L-1 rather than E-1 visas. The reason is that they are not engaged in "direct trade" between the US and Japan – i.e., between a Japanese manufacturer and an American customer – but are using middlemen. Second, many low-level employees of Japanese companies who have traditionally obtained E-1 visas appear to be ineligible for them. The statutory requirement for an E-1 visa is that the applicant must be coming to the US in a managerial or supervisory capacity or that he is a highly trained and specially qualified individual.

This "new" American policy on E-1 and E-2 business visas has caused considerable apprehension among Japanese companies operating in the US. Many Japanese perceive the change as nothing less than the use of immigration laws to counter the massive Japanese trade surplus with the US and, particularly, the Japanese "invasion" of the US automobile market.

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STATEMENT OF ESTHER M. KAUFMAN, ESQ., LAW OFFICES OF ESTHER M. KAUFMAN, NEW YORK, N.Y.

Ms. KAUFMAN. Thank you, sir.

I have listened to testimony and read some of the testimony already handed out, and many of the points I wanted to make about the technical aspects of the various categories have already been made.

Therefore, I shall restrict myself to the suggestions I would like to make with regard to implementation, because, no matter what's in the law, unless it's carried out and works, it has no effect; it doesn't benefit, it doesn't harm.

Under the present business visa system, two basic categories, the H's and the L's, are required to be established by petitioning to the Immigration Service.

Actually, there are four categories, because the H has three separate divisions, and each one has different requirements.

The Immigration Service does all of the adjudication, but it has very real problems.

First, the Immigration Service is seriously understaffed. What with budget cuts, and the attitude of the present administration there doesn't seem to be any likelihood that this condition is going to be remedied in the near future.

Second, that understaffed group is very often undertrained.

Third, the petitions are ajudicated district by district, and although they are all adjudicated under the same law, the inconsistencies are incredible.

For example, a foreign company bringing an L executive over, filed a petition for him in New York. The supporting documentation was a letter from the foreign company and a letter from the American company, both setting forth the necessary facts. The petition was approved, without problem.

The very same company petitioned for an L alien at the same executive level, who was to be working in Florida, and the application was sent to the Tampa, Fla., field office, with the same type of documentation.

The petition was returned with the documentation. The Tampa field office wanted proof of 90 percent common ownership, in spite of the fact that the general counsel for the Immigration Service has said 30 percent is enough. The Tampa office wanted the corporate records of employment and taxation for the past 3 years and 3 years of the alien's tax records.

I believe the Immigration Service's present situation creates a self-perpetuating backlog mechanism. The various districts put out processing times. Processing times in the bigger districts may be 3, 4 months. The employer, the business organization that needs somebody earlier than that has the right to go in and ask for expeditious handling if he can show a convincing need for it.

When that convincing need is shown, someone is pulled from the regular workload, to work on that application. The work that person would have done adds to the backlog. The more such expedites are required, the more backlog; and the more backlog, the more expedites. With the result that, realistically, you don't get a

petition approved for 1 year, giving the alien the right to work for 1 year.

I filed an application in New York on July 29, 1981. It was approved on October 23, and supposedly sent to the consultate in Lyons France. It had been approved retroactive to the July filing date. As of December 10, the American consul in Lyons still did not have the notice of approval.

Four and a half months of that alien's permitted year in the United States are done, and he isn't here yet because he still doesn't have a visa.

For these programs to be meaningful, they have to work and time is an essential element. I would suggest a modification, but basically the same sort of thing that Mr. Cagney testified about, a program that would permit and would require the employer to bear the burden of the processing and the enforcement.

I would suggest that for each company which needs to bring more than one L, there be a procedure, a petition procedure, that would permit that company to be recognized as an employer who comes within a specific program.

I would further suggest that the petition not go to each particular district where work will be done, but to a centralized office in the Immigration Service, so that there will be consistent adjudication.

The form that that program should take, and the limits imposed, should be determined on the basis of genuine information on usual business needs. Once that company has been admitted to the program, it would have the duty of administering it; of issuing the papers, under oath, that will permit the alien simply to go in to a consulate and get his visa; of keeping track of the alien once he is in the United States, and reporting regularly to the Immigration Service, of advising the Immigration Service of any violations, the penalty being that abuse of that program would revoke the petition on behalf of that particular company, and the company would have to revert to the present barely workable system.

I think this is something which should be considered.

Thank you.

Senator SIMPSON. Thank you very much.

[Ms. Kaufman's prepared statement follows:]

PREPARED STATEMENT OF ESTHER M. KAUFMAN

I am Esther M. Kaufman, an attorney in private practice. I first entered the field of Immigration and Nationality Law in 1954; at present, my practice is entirely in the field of Immigration and Nationality Law.

The Immigration and Nationality Act, when it was passed in 1952, contained six sections dealing with business visas:

101(a)(15(B), covering visitors for business (B-1s);

101(a)(15)(E)(i), defining treaty traders;

101(a)(15)(E)(ii), defining treaty investors;

101(a)(15)(H)(i), permitting an alien of distinguished merit and ability to come to the United States temporarily to perform a temporary job requiring such merit and ability;

101(a)(15)(ii), permitting an alien to come to the United States temporarily to perform temporary services or labor, if unemployed U.S. workers capable of performing such services or labor could not be found; and

101(a)(15)(H)(iii), permitting an alien to come temporarily to the United States as an "industrial trainee".

In the almost thirty years since then, the Congress has not abolished or restricted any of those categories (except for the 1976 restrictions on foreign graduates of medical school). In fact, there has been a consistent extension of the persons who could come to the United States with business visas. The H-1 category was enlarged to permit the alien to come to the United States temporarily, even if the job he was to perform was not a temporary job. In the H-3 category, the word "industrial" was removed, making it applicable to any type of trainee. In every one of those categories, except for the B-1, the spouse and children were permitted to accompany or join the principal alien, with visas in a specifically related category.

In 1970, the Congress, recognizing that the normal immigrant visa process took more time than it was practicable for a company to wait in order to bring over key personnel, added the L category. That permits the bringing over for a temporary period aliens who have worked for that company abroad (or its affiliate or subsidiary) for at least a year immediately prior to their coming to the

United States, in executive or managerial positions, or positions requiring specialized knowledge, if they are coming to the United States to work for that company in one of those three capacities. Spouses and children are included in the L category.

There were, and are, two separate processes for the bringing over of those classes of aliens. The B-1, the E-1 and the E-2 need only establish their eligibility to the satisfaction of an American consular officer abroad, and a visa will be issued. Such visas often are issued on the same day the application is made; at most, in a clearly eligible case, they may take a few days. Once the visa is issued, the alien is able to depart immediately for the United States.

The second process covers the H-1, H-2, H-3 and L-1 alien. These aliens cannot apply for visas in those categories until petitions to establish their eligibility (and in the case of the L-1, the company relationship and prior year of employment) have been submitted to the appropriate office of the Immigration and Naturalization Service in the United States, approved, and sent on to the designated American consulates. Initially, no such petitions could be approved for more than one year. The corresponding visa could not be issued for a period beyond the validity date of the petition, i.e., no more than one year.

By contrast, B-1 visas are often issued for an indefinite period of validity, E visas for up to four years. Recently, in 1981, the Immigration Service amended its regulations to permit the approval of an L-1 petition for an initial period of up to three years, with the consequence that an L-1 visa can be issued for a period of up to three years. The H approval time restriction remains.

Because of the simpler qualification process and the very much faster issuance of visas, B-1s and Es would seem to be the visas of choice. However, each has its own restrictions. The B-1 alien (with very limited exceptions) cannot be coming to the United States for employment, and cannot receive a wage or salary from a United States source. As for Es, not every company and not every alien can qualify; there are countries with which we do not have the necessary treaties, and even where the treaty exists, the U.S. company must be at least 51% owned by nationals of the treaty country and the E alien must also be a national of the treaty country; additionally, if the treaty trader visa is sought, the company in the United States must be doing at least 51% of its trading with the treaty country.

Therefore, in most situations, the company must go through the H or L petitioning process. This is often a harrowing, time consuming experience.

The Immigration and Naturalization Service, which must adjudicate these petitions, is seriously understaffed, and budget considerations and policies do not make it appear likely that this situation will be remedied in the near future. All too often, the adjudicators on the Immigration Service staff are undertrained. There is considerable inconsistency in understanding and interpretation from district to district, and between the Regions and the Central Office of the Immigration and Naturalization Service. As a single example, an L-1 petition was approved in New York on the basis of two supporting letters, one from the foreign entity, describing the required business relationship and vouching for the alien's position level and year of prior employment, and one from the American entity, confirming the business relationship and describing the need for the alien's services here. The same company submitted a petition to the Tampa, Florida field office, for a person who had served in an equivalent capacity abroad, and would be serving in an equivalent capacity in Florida. The Tampa field office returned the application, insisting that the petitioner must submit the foreign corporate tax and employment records for the previous three years, must submit evidence that the companies were 90% commonly owned (despite the existing memorandum from the General Counsel for the Immigration and Naturalization Service that even 30% of common ownership could be sufficient, if there was common management and control), and that there must be submitted the alien's own tax returns for the previous three years.

Aside from inconsistencies, the personnel shortage creates a self-perpetuating backlog mechanism. The company which needs the alien in the United States urgently, and cannot wait for the normal several-month processing period, can ask for and receive expedited adjudication upon submission of convincing evidence of that urgent need. The adjudicator is taken away from regular case work to work on this application. Thus, work the adjudicator would have been doing on the regular workload is delayed. The more such requests for expeditious handling, the more staff is diverted from normal cases. The more such diversions occur, the longer the standard processing time becomes. And the longer the standard processing time becomes, the more applications for expeditious handling are submitted.

This mechanism operates not only with relation to petition processing, but with regard to extension applications as well. Since every H-1, H-2 or H-3 applicant will have been admitted for no more than one year, and many of them have genuine need to remain in the United States for more than a year, when the end of that year approaches, there must be an application for extension submitted if the alien is to be able to remain and work legally in the United States. In cases in which it necessary for the alien to travel abroad as part of the business duties, he must have a valid visa in order to return. Unless the extension application is approved before he departs, he will not be able to get that new visa. And if he leaves the country, he cannot have an application for extension processed, but must have a new petition filed on his behalf by the company, and approved, before he can get the visa to return. Understandably, therefore, there is pressure for expeditious handling of the extension application, especially where the Immigration Service's own estimate of the processing time for an H or L extension is three months (this was the case in the New York District as of October, 1981). Thus, the expedite-backlog cycle is fed.

If the Administration's Omnibus bill is passed, the additional duties it proposes for the Immigration Service (in administering the "amnesty" provisions, if nothing else) would exacerbate the present system and practices to the point where it is difficult to conceive that such cases could be processed within any meaningful period.

Therefore, not only for the business organizations involved, but for the well-being and functioning capacity of the Immigration and Naturalization Service itself, the processing of business visa categories should be changed to a feasible, time-efficient system, one that does not require repetitious readjudications of the same facts, one that places some of the onus of administration and processing on the companies that benefit from these categories.

The National Foreign Trade Council, in its testimony, will be covering a procedure that I believe is a practical and useful one. I would like to propose it as well, with certain modifications and extensions.

Many large companies do not use the temporary visa petition once; they need and bring over to the United States varying numbers of people, some in H-1 status, some in L-1 status. For each L-1 there must be a new petition; for each H-1 there must be a separate petition (with certain limited exceptions). For

each alien, there must be several extension applications, perhaps several expedited handling requests. Since the prime benefit is to those companies, it is not inappropriate that they carry the burden of the time consuming processing.

There is in existence, for J-1 exchange visitors, a procedure which permits admission to the United States of many aliens, without the necessity of a petition for each. Companies, institutions, etc. make application and are permitted to administer recognized exchange programs. When an alien is to be brought to the United States under one of those programs, the program administrator takes the responsibility for determining the alien's qualifications, issues him a standard form establishing that he will be participating in that program, and the alien takes that form to the American consulate and is issued a visa.

Why not a similar program for business visas ?

Standards for the size and/or type of company that can qualify can be set on the basis of information on genuine business needs. Limitations on the number of aliens who can be in the United States at any one time under any such program can likewise be set on the same basis.

The licensing or qualification of each company for such a program is something which should depend upon consistent standards, consistently applied. I would therefore propose that the petition of a company to qualify for such a program (which would be filed only once), should be adjudicated by a special central office or section of the Immigration and Naturalization Service, no matter where in the United States (or at how many locations) the aliens it brings in will be working. The number limitations for each company would be applied for and set at the time of that petitioning.

Once a petition is granted to a company, that company will bear the prime responsibility for the administration of that program and for its enforcement. The form it issues to the alien, which he presents to obtain his visa, can be executed by it under oath, attesting to the qualifications of the alien, the basis on which that alien comes within the approved program, the length of time his services are needed in the United States. There should be provision, especially in the case in which travel is an essential part of that alien's duties,

for the issuance of a visa valid coextensive with the period of the alien's assignment to the United States.

It should be possible for the alien to be admitted to the United States for the full period that he will be working here (if it does not exceed a specified period, such as three years), to do away with the need for extension applications. Once the alien is in the United States, it should be the duty of the company to monitor and report to the Immigration Service that the conditions of admission are being complied with. For example, every such company should be required, once a year, to send a report, executed under oath, to the Immigration Service, listing every alien brought by it who is then in the United States, indicating when he entered, where he is working, etc. That report should also contain information to establish that those aliens who have completed such service have left the United States. The company should also be under an obligation to report to the Immigration Service, within a period of days, any alien who leaves its employ, with information as to where he was last employed, and his last known address. With computerization, there should be no genuine problem in making and keeping accurate records.

The penalty for failure to comply with any of the monitoring and enforcement requirements would be a revocation of the program authorization, thus giving the company genuine incentive to comply, since the alternative would be to revert to the individual petition system.

For companies who do not come within the defined scope of the program, there would be the present petition system. However, with the removal from the Immigration Service's workload of the numerous cases that could be handled under such programs, hopefully processing times would speed up.

I feel, too, that such programs should not extend only to persons who can qualify as L-1s. Very often, a company may need in the United States someone who has not worked for it for a year abroad, but can qualify as an H-1, and is needed sooner than an H-1 petition can realistically be processed, approved and sent to the Consulate abroad. The ever-present threat of revocation of the program authorization, and the qualification document under oath, should be a realistic deterrent to possible abuse of the program by the company. To be realistic, the law should be enlarged to include business executives at and above a certain level within the H-1 category. Business management, especi-

ally in large companies, is a profession, whether or not the person entrusted with that responsibility has an M.B.A. degree. Consideration should also be given to redefining the H-3 category, because the actuality is that relatively few companies train personnel through class-room or lecture sessions for more than a very brief period (if there is any such training at all), and knowledge is gained through on-the-job training in most cases. This area should be included within the overall program.

I do not see any reason for requiring that persons brought over under such a program should be required to return to the foreign company before they can be eligible to apply for permanent resident status. From a practical standpoint, it is unreal to expect a company to want to hire permanently someone it has not tested within the framework of performing the actual functions the job would require. The bringing to the United States initially may be a form of testing. And, when and if the employer is satisfied that the person would be of benefit to it in a permanent job in the United States, it should be permitted to use the prevailing and/or most practical procedure available. Such aliens would have to meet the normal requirements for permanent residence; if not in L-1 status in a managerial or executive capacity, they would have to obtain a labor certification. They would be under the same quota and preference restrictions, would have to establish admissibility under the same criteria, as all other applicants for permanent residence.

In summary, the Congress has recognized, and continues to recognize, the need for business visa categories. Implementation of the present laws is cumbersome, and unduly time consuming, with no foreseeable prospect of improvement. Therefore, it would be well to consider the changing of the present laws to permit of a system that can be more easily and efficiently administered and would relieve the burden of an already over-stressed Immigration and Naturalization Service.

Senator SIMPSON. Let me ask you, Sam, you mentioned the advantages gained by the adjustment of status application, and I know you are aware of certain of the abuses that have taken place within that system. What do you believe should be done about some of those abuses?

Mr. BERNSEN. Well, where there are abuses, the applications can be denied. Can you tell me, Senator, what abuses you might have in mind, so that I might address some of those?

Senator SIMPSON. I think I mentioned some of them at the beginning. I had them itemized. Let me get my little list of those.

We have heard of the use of skilled American personnel already available, it's much like we look at the H–2 program.

We hear of the importance of these visas in connection with the American business economy and the growth of the American economy, and yet we hear of the abuses. One of them is where American skilled personnel are available. Another is where these people come for purposes other than entering for temporary purposes, knowing that if they can just get here, that they can upgrade, to get a more permanent status. Those are some of the abuses I speak of.

Mr. BERNSEN. Well, I think the abuses you mentioned are in the worker area. No abuses have been mentioned in connection with relatives. I would hope that the relative area at least is noncontroversial.

Now with regard to workers, the aliens who wanted to get third preference or sixth preference, those are the classifications for the workers, they have to qualify just as any other alien does, the same as an alien abroad.

The system that we have says to the alien, if you want to immigrate to this country as a worker, as a third or sixth preference, you have to have an employer.

It's a little bit unrealistic to expect that an alien in Timbuktu is going to be able to locate an employer in the United States to come here legally. So he comes here as a visitor for pleasure. He comes with a dream in his heart. He wants to live in this country. Maybe he finds an employer that can use his skill while he is here.

If he finds one, and if the employer complies with the law, and the alien complies with the law, it would seem to me that that really is not an abuse.

Senator SIMPSON. You have a large heart. I remember that. I remember that very well.

Let me ask this question, and then I must go vote, and I guess we will just take a recess for 5 minutes, and we can still conclude much similar to the program that we had.

Why don't we do that now. Let me just do that, because the second bell has gone. So we'll just recess for about 5 minutes, and I'll return after this rollcall vote.

[Recess.]

Senator SIMPSON. Yes, Mr. Foster, I wanted to ask, Could you comment on the one-step procedure with respect to the adjustment of status? Has that been effective in your experience? Do you think it should be expanded from the use in offices to other offices, or does that require additional personnel and costs? I'd like your view.

Mr. FOSTER. Senator, in my experience, it has been effective. I think I recognize in certain districts, I know particularly in New York, there have been a number of problems. In Miami there have been problems and complaints, but the concept is impeachable that Immigration has a hard time keeping up with all the documents, you want to cut down on the numbers of levels of people and separate adjudications. If you can concentrate everything at one time and do it, then it makes a lot of sense, and that's essentially what one-step is.

You have the individual applicant before you, all the papers are before you. There is no chance anything is going to go awry, and it is, in my opinion, the most efficient way.

Now the problem with one-step is a problem of insufficient personnel, and that is, more people often are there at Immigration who line up, who are apparently eligible, and often not all of them go through.

But the answer to that is if you did away with one-step, those cases would still exist. I think statistically more cases will go through that way with one-step than otherwise.

So I think the concept is good and I'd like to see it expanded.

Senator SIMPSON. You mentioned, too, that American industry would suffer severely if section 245 were restricted or repealed. Would you just express that briefly as to why that is? Is this a question of the inability to obtain longer term visas without bureaucratic delay, or just what could you share with us on that?

Mr. FOSTER. Well, I realize that covers a lot, saying American industry would suffer.

First of all, of course, in each case where we are talking about adjustment of status, the person has already qualified. He's already gone through the process—if it's an employer case—of proving that there are no qualified U.S. workers available at the prevailing wage, and so we are now talking about where is that person going to apply. We are just talking about a question of jurisdiction. Does the jurisdiction lie where the person is presently on the job?

After all, he has already proved that the company cannot find anybody else, he's here, he's had a lawful admission. He may often be an executive, and it's a question of whether or not you are going to force that person to take a trip abroad halfway around the world with his wife and his children.

One way I would say it would suffer is just the disruption. People often go before the American consul, even when they are scheduled, and if there is a missing document, they may have to wait weeks or months. So if the person is critical to the operations of the company, it's in that area that I would be most concerned for the disruption.

And conversely, I see no real benefit to the Government by sending him over there.

Senator SIMPSON. Let me just ask you, Sam, one question, and then come to these others. And I have asked this previous. I don't believe you heard the question I asked, or the response, but some people who discuss this adjustment of status do so in all-or-nothing terms. Could one make holders of the B visas and the F visas ineligible for adjustment for the reason that we find that at least three-

quarters of the nonimmigrants who adjust came from those two groups?

Mr. BERNSEN. Well, you could write such a rule. Congress has the power to do that. I would question the advisability of doing it, because we constantly come back to the basic point that adjustment of status is not an end run around the Immigration system. I do not believe it's an abuse, because these people must comply with all the rules, just as the person abroad.

An alien has to show, if he wants to get adjustment of status as a worker, that American workers are not available; whether he's in the United States or abroad, he's got to show American workers are not available.

Senator SIMPSON. In your experience, how do foreigners view our procedures? As excessively absurd, or complex, or too easy to enter, or too easy to adjust? How do they perceive it?

Mr. BERNSEN. Well, from the people I encounter, I believe they perceive it as an incredibly complex system which is simply not understandable to them. It's a sort of a Kafka-like system. It's unreal. They go to INS. They ask questions. They get answers they don't understand, and in sort of a trancelike state they wander into law offices and make a lot of money for lawyers to help them get out of this maze.

Senator SIMPSON. What do you think of that? [Laughter.]

Rebuttal will now be—well, that was similar to the response I had when I asked earlier in the day that question.

Well, Mr. Goldstein, would you comment on the desirability of continuing the separate categories of business visas. Given the overlap that exists, would it be better to have fewer categories for business visas?

Mr. GOLDSTEIN. I think that the current group of categories is adequate to deal with the needs of American industry, providing that we have proper and uniform adjudication of those visas.

I don't think the problem is that we have too many categories. I think the problem in the Immigration Service and at the consulates overseas is that we don't have uniformity in decisionmaking.

We have situations where individuals who could secure an E visa, were they to appear in England, are not found eligible to secure it because they are appearing in France, where the consul may have a somewhat different attitude toward an E visa.

We have situations where someone who is eligible for and will get an approved H-1 in New York would not get it in Los Angeles for the very same job, with the same job description.

I think the problem, therefore, Senator, is just simply that we lack a system of uniform visa adjudication on a national and an international basis, rather than the problem being that the visa categories are unclear to individuals who are applying for them, or that they don't meet the current needs of the American business community.

Senator SIMPSON. Well, you have obviously had a good deal of experience with foreign visas. Do other countries grant nonimmigrant business visas much more easily than we do?

Mr. GOLDSTEIN. I think that would depend clearly on the country that you look to. For example, the Japanese, it has become quite apparent, have made it very difficult for Americans coming

into Japan to secure appropriate work visas. And I know that one of the issues that's been raised by the Department of State with this alleged E visa problem for Japanese is, "Well, look how difficult the Japanese make it for us to come to Japan and do business."

I am somewhat familiar with the English system and the Canadian system, and I do think that you see various degrees of complexities in each of those systems.

I might recommend to you, Senator, at this time that it might be useful to you or the members of your staff to participate in a forthcoming seminar here in Washington June 20–22 on comparative immigration law being sponsored by the International Bar Association. We are going to have representatives of eight countries present, speaking on the immigration laws of their countries.

Senator SIMPSON. Now I know where Arnold Leibowitz dug up that invitation for me to speak at the lunch. [Laughter.]

Mr. GOLDSTEIN. That's correct, Senator.

Senator SIMPSON. Yes, I have. I've tracked it right now. Well, maybe I can participate and certainly I assure you that staff members will be there.

Since you spoke of the Japanese, could you comment on the reasons as you see it for the reaction of the Japanese to the change in the issuance of the E visa?

Mr. GOLDSTEIN. Well, I think initially you must keep in mind, Senator, that the E visa "problem" developed at the very time when the Japanese automobile invasion of the United States was causing the most concern here in this country, and at that very time there was an article in the New York Times which quoted a high official in the State Department, indicating that the Japanese had been abusing the issuance of E visas in Japan.

The person who was quoted in that article subsequently indicated that he did not mean to single out the Japanese; that this E visa problem was occurring in Scandinavia, in certain countries of Europe as well. But to the Japanese, I would say that the change in E visa adjudication—and it has been rather substantial—has led them to believe that the United States is taking a posture now of using its immigration laws to deal with its economic problems.

My own reading of the situation is that what actually happened is that over a period of years the American consular offices in Japan were being lulled by the very admirable visa record of the Japanese who would come to the United States and succeed in doing business in the United States, and then for the most part in great numbers return back to Japan at the conclusion of their business visits. And the Japanese found that they were getting their E visa cases, often very marginal cases, approved very readily by American consular officers.

And then all of a sudden, the State Department adopts a stringent attitude and says to the Japanese:

Well, we know you have been getting them very easily in the past, but we feel that now is the time for us to curtail the issuance of E visas to those marginal cases where you have been getting them too readily.

And this occurred at the very time, in October 1980, when there was so much concern here in this country over Japanese imports and balance of trade.

I think it's also fair to indicate to you, Senator, that the Japanese have not themselves, in my opinion, been blameless, because there were many instances where Japanese were filing E visa applications for employees who were not really highly specialized or essential in the roles that they were coming to perform in the United States.

There was a Japanese bank in San Francisco that secured 195 E visas for bank tellers, which clearly does not qualify under the E-1 employee visa requirement for being high level and specialized and essential to the operation of the company.

There was a Japanese hotel that managed to secure an E-1 visa for a position classified as a beverage department manager, which turned out to be nothing more than a bartender at the hotel.

And I think what was happening realistically was that the American consuls was essentially telling the Japanese, "Look, if you give us these kinds of documents, we'll issue E visas," and the Japanese were saying, "OK, we'll give you these documents, and if you want high level job titles and high level positions, here they are."

And then all of a sudden, the State Department says the Japanese are guilty of visa abuse, which I think was very unfair, and I might add caused a great deal of furor in Japan, because when they read the interpretation of that statement in Japanese, the translation of the word "abuse" in Japanese suggests illegality. I don't think it's fair for us to accuse the Japanese of exercising any degree of illegality in the visas that were being issued to them.

Senator SIMPSON. Thank you very much.

Ms. Kaufman, you mentioned the recommendation of having reputable companies authorized to handle their own L-1 program such as is now authorized for the exchange visitor or the J-1 program.

How do you answer the point that many companies, even very large and reputable ones, discharge American engineers, their American engineers, in order to hire the lower priced foreign engineer?

Ms. KAUFMAN. First of all, I am not aware that that is a fact. It's a statement, made by somebody who obviously has a special interest in the area. Generally, also, engineers are not L-1's, they are H-1's.

I think there is an impression being given that American companies are using these categories to, in effect, import "coolie labor." I don't believe that is the case. I have not seen it happening, and I don't know that anybody has been able to document that claim.

The Immigration Service has indicated that there is relatively little abuse. There is the power, there is the mechanism to curb that abuse if, in fact, it does exist. What I have proposed in the suggested system is that the companies be made specifically responsible for it, because any papers they would file with the Immigration Service pertaining to those programs would be executed under oath, and any abuse of that program would lead to its revocation.

Senator SIMPSON. You also mentioned the possibility of granting a long-term visa. Would that result in practice in actually building up equities and ties with every one of those recipients and they would then later be able to prove hardship and be able to stay as a permanent resident, if they desired?

Ms. KAUFMAN. No, sir, I don't believe so. The person who comes as an L has equities already more or less built into his situation. He doesn't need a labor certification under schedule A, group 4.

The person who comes as an H builds up no equities. If he wants to become a permanent resident, he needs a Labor certification, the same as anybody else does. He needs to meet all of the qualifications for adjustment.

The question of long-term stays in the United States, building up ties that could create hardship, I believe refers to suspension of deportation, for which there must be a minimum of 7 years of physical presence in the United States.

We have been getting evermore severe decisions by the Immigration Service, the Board of Immigration Appeals, all the way up to the Supreme Court, on what constitutes hardship.

I would be very, very surprised if someone who was here as an H-1, just because he had been here 7 years, would be able to prove the requisite hardship to get him suspension of deportation.

Senator SIMPSON. If one were to expand the length of stay permitted under one of the L or the H categories, and also make it easier to get those visas, would you feel then it would be appropriate not to permit adjustment of status?

Ms. KAUFMAN. No, sir. I don't see why there is a necessity or why there is a connection. There has been quite a bit of testimony here about the fact that the people who are here and then apply for adjustment of status rather than going overseas, to get their visas, are not doing an "end run" around the process.

These are people who are thoroughly eligible. The only difference is that instead of carrying out the procedure at the consulate abroad, they are carrying it out in the United States. They take their proper place on a quota list, their priority dates are in no way tampered with by the fact that they are here. The sole advantage that they have is that they are in fact here.

But they are not really doing anybody else out of anything.

Senator SIMPSON. Do you have a thought on the issue of the fact that more than three-quarters of the nonimmigrants who adjust come from the two groups of B and F visas? Do you have any comment on that?

Ms. KAUFMAN. In what terms, sir? In terms of restricting them?

Senator SIMPSON. Would there be any reason to make those two groups more restrictive for adjustment of status or ineligible for adjustment?

Ms. KAUFMAN. I don't see why, sir. If they qualify, they would qualify just as well if they took the trip home and waited for their visa processing abroad, and I don't see who would be damaged by the fact that they can wait here for it.

Senator SIMPSON. That's why I asked.

And then you have had again great experience with these visas. How do other countries handle that, in your mind? Do other coun-

tries grant these nonimmigrant visas with greater ease than we do? Are you aware of that?

Ms. KAUFMAN. I'm not aware of it, sir, but it seems to me that the perspective in the United States should be what is good for the United States, what is good for the American business organizations that need these people.

Senator SIMPSON. I think I appreciate that.

Mr. Foster, let me ask you how you perceive the foreigners view our procedures, as others stated, excessively rigid, complex, too easy, what?

Mr. FOSTER. Senator, how foreigners view our procedures immigration-wise?

Senator SIMPSON. Yes.

Mr. FOSTER. I would agree substantially with Sam Bernsen that most foreign nationals would view our immigration procedures as being complex. Part of the problem is inherent. As long as we decide, as Congress has, that we are going to have a limited number of people, and once you decide we're not going to let everybody in, we're going to have to have a selection system, it's inherent in the system.

The second part of it is that Immigration has been so understaffed and underfunded that they really cannot respond to any public questioning.

So, yes, the average alien will perceive our immigration procedures to be very complex.

Senator SIMPSON. Where are we with the—and this is the final question. If one applies for a visa abroad and is turned down by the consul and our embassy, they have no appeal. If they apply to adjust their status here and are turned down, what right of appeal should or would they have?

Mr. FOSTER. Well, under the current law, you're absolutely correct, and that's a matter our association is concerned with, and that is an American consular officer overseas has absolute power to make the decision, from which there is no appeal. And I could cite horror story after horror story.

I believe that's where the problem is. Within the United States, if it's a nonimmigrant visa petition, he has an appeal, he has administrative review which I think is proper. If you're talking about adjustment of status, there is no formal appeal unless the Immigration Service initiates deportation proceedings, and then in effect there is appeal because the applicant, if he's otherwise eligible, can file an application for adjustment of status before the immigration judge. So that's a form of administrative appeal. And then a denial would be appealable to the Board of Immigration Appeals.

But something so inherently as important as the right to remain permanently and to work here permanently is so important, I think it's proper that there be some level of review.

Senator SIMPSON. Well, let's kind of concur that it is not an end run, but under the present policy it could be an additional attraction? In other words, getting here under any kind of—you know, get here under the B and then move from there.

Mr. FOSTER. The additional attraction being that once in the United States, they'd have the right of appeal?

Senator SIMPSON. Well, you have lots of things going for you once you get here. Some of the things we have heard testimony on today. Once you're here——

Mr. FOSTER. Candidly, Senator, I believe there are two real attractions, and that is once you are here, as Mr. Bernsen indicated, if in fact you need an employer, it's much easier to find an employer once you are in the United States, rather than abroad. But as far as the right of appeal, I don't think that's abused. I think most individuals seeking permanent residence wouldn't come here just for the right of appeal.

After all, that would just get them a matter of a few weeks or months, and if the Service was concerned about that, then they could expedite the appeals any time they wanted to.

Senator SIMPSON. Well, anyway, the entire material has been very helpful for me, and I appreciate it. I think that will conclude—you were talking about budget matters, Ms. Kaufman, and the second continuing resolution that we just passed a few hours ago had about $65 million more than the first continuing resolution for the INS. That puts it up around $428 million, so that's what we've been scratching on in the back rooms, and it certainly needs a tremendous amount more attention in the next budget presentation of 1982, and we hope to see that it's in place there.

Well, I do appreciate it. As I say, this will be the final hearing of this year. That concludes that 17 days of hearings over the period from April 1, 80 hours plus, about 205 witnesses, and a similar effort by Congressman Mazzoli of the other faith over in the House. We do keep in close touch. We're going to do something, and hopefully it will be done right and without the usual things that accompany immigration refugee policy reform in America, and that is what I've said many times, vestiges of racism and some pretty interesting aberrations from logic.

So with this—I was thinking of a terrible pun. We might conclude this and say how corporate America has gone to L. [Laughter.]

But I don't do that. It's too late in the day.

All right. Thank you very much. We appreciate your participation. It's been most helpful, and that will conclude this hearing.

[Whereupon, at 4:50 p.m., the hearing was concluded.]

APPENDIX

PREPARED STATEMENT
OF THE INTERFAITH COALITION
FOR JUSTICE TO IMMIGRANTS

Testimony by the interfaith Coalition for Justice to Immigrants before the Subcommittee on Immigration and Refugee Policy, Senate Judiciary Committee, December 11 , 1981.

Senator Alan Simpson
Senate Subcommittee
Immigration and Refugee Policy
Room 6205
Dirksen Senate Office Building
Washington, D.C. 20510

The Omibus Immigration Control Act (S.1765 hereinafter referred to as the Act) introduced in the Senate by Senator Thurmond at the request of the Administration on October 22, 1981, contains a legalization provision (Title I) which is unacceptably burdensome and fundamentally unfair to the individuals which it affects.

Although a legalization measure is certainly called for in the new legislation, the terms which couch the present provision will have the following unfavorable results: 1) Creation of a new class of persons whose status will be uncertain and who will live under a continuous threat of deportation. 2) Creation of a new class of workers who must comply with all tax obligations, but, unlike citizens or permanent residents, will not be entitled to any corresponding benefits. 3) Break with previous congressional policy by forcing the separation of families. 4) Aggravate administrative problems with the repeated 3 year registration and other record keeping requirements.

The remaining portion of this testimony will be dedicated to explanations of the reasons which have lead the Interfaith Coalition for Justice to Immigrants to the conclusions enumerated above and proposals for redrafting the legislation.

In the past Congress has enacted several legalization laws. These have usually granted permanent residence to those individuals who were in the country prior to the specified cut off date. Title I of the Act, however, does not

grant permanent residence to those aliens who were in the U.S. prior to January 1, 1980. Instead, it provides for a new "temporary residence" status. This new classification is required to be in the U.S. continuously at least 10 years before being eligible to adjust status to permanent residence.

Further,,when temporary residents do apply for adjustment of status they will be required to demonstrate an understanding of the English language. This is not a requirement with which other applicants for permanent residence must comply and constitutes a discriminatory procedure.

The amount of discretion granted to the Attorney General and the extensive record keeping required by this proposed legislation will further exacerbate the administrative burden on an already overtaxed Immigration and Naturalization Service (INS). The offices of the INS have been understaffed and backlogged for some time. They need to be relieved by enactment of simpler legislation and not plagued further by procedures which require manpower, paperwork and time.

Therefore, the Coalition proposes that legalization be in the form of permanent residence without a language proficiency requirement to provide certainty of status to the aliens involved and to minimize administrative processing.

An obvious defect of Title I, and one that is of great concern to the Coalition, is that it is plagued with vagueness. It states that the Attorney General "in his discretion... may accord temporary resident status..." This language provides little guidance and accords wide discretion to those who implement the Act. This usually leads to abuse by local authorities, lack of uniformity in the enforcement of the law and uncertainty on the part of the alien as to what his status actually is at any given time. Such vagueness is also apparent in the paragraph which sets out the registration requirement every 3 years after the initial registration. This paragraph provides that registration must take place "... as long as the alien remains under temporary resident status." However, Title I of the Act does not enumerate the reasons for which an alien would be stripped of his temporary resident status. This will again leave the alien fearing that his status may be cancelled for reasons which he does not even know and living under a continuous threat of deportation. As a result, the Coalition proposes that the legalization process be available to all persons who were in the country prior to January 1, 1980.

Those individuals eligible for legalization must register with the Attorney General within twelve months from the enactment of the legislation in order to benefit from the law. Those who do not register in time or do not learn of the procedure until after the expiration of the registration time will presumably not be able to legalize. We propose that the registration period be extended or left open in order to make it available to all those who qualify.

The immigration statute has always been designed to promote family reunification. The very framework which sets

out priorities for the purpose of issuing permanent residence visas has been predicated upon the concept of family reunification. Priority has always been given to immediate relatives of U.S. citizens and residents, yet, the Act's provision for legalization specifically states that no preferential treatment is granted for immediate relatives. Instead, it provides that immediate relatives of temporary residents may be eligible for legalization only if they qualify on their own under the provisions of the Title. We propose that the legislation include family reunification provisions.

In addition, temporary residents will find no guidance in the Act with respect to if, when and with what frequency they may leave the U.S. to visit their families abroad. Therefore, clarification on this subject is required.

Another objection to the bill is that the temporary resident aliens will constitute a new class of workers who will be subject to institutionalized economic discrimination. These individuals must comply with all of the fiscal obligations of citizens and permanent residents in that they must pay taxes, make contributions to social security, etc. However, they are not eligible to receive any of the benefits from the Food Stamp Act, Housing and Urban Development Act or Social Security Act. This provision is exploitive, particularly in light of statistics which show that, in the average, immigrants pay more taxes per capita than citizens because they are mostly young adult workers motivated to create for themselves an economic reality better than the one left behind. Therefore, the Coalition maintains that legalized aliens be granted full equal rights as those accorded to citizens and permanent residents.

In conclusion, we urge you to modify Title I of S. 1765 to conform with our proposals. Such redrafting of the bill will provide a more equitable, yet, effective law, which will also prevent additional administrative burdens.

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